

**Recodification of Provisions Dealing with
Restitution to Victims of Crime (Gov't Code §§ 13959-13969)**

By

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(April 9, 2002)**

Introduction

The California Victim Compensation and Government Claims Board has retained the Capital Center for Government Law and Policy at the University of the Pacific McGeorge School of Law to undertake a revision of provisions in the Government Code dealing with restitution provided to victims of crime. (Gov't Code §§ 13959-13969.5) The overall purpose of the revision is to effect greater clarity and consistency in the statutes. Most of the revision is nonsubstantive and technical in character. However, a number of substantive changes have been made and are noted in the section-by-section comments which appear below.

The statutes dealing with restitution to victims of crime are in an extremely sorry condition. Many of the most important substantive provisions are buried in definitions (*see* Gov't Code § 13960, definitions of "victim", "derivative victim", "crime", "injury", and "pecuniary loss"), definitions have been modified by the enactment of new statutes (*see* Gov't Code §§ 13960.2, 13960.5, dealing with felons as victims and nonresidents as victims), and separate definitions have been enacted elsewhere in the chapter (*see* Gov't Code § 13966, defining "carrier" and "victim"). Provisions dealing with procedure and substance have been similarly jumbled throughout the chapter. Provisions dealing with the time for filing of applications, and the grounds for extending the time for filing, appear in several different provisions. (*See, e.g.,* Gov't Code §§ 13961.01, 13961.05).

In order to cut through this tangled mass of statutes, we propose an overall reorganization and renumbering that will consolidate like provisions together in single sections. We believe that the reorganization will make the statutes much easier to learn for people new to the field, much easier to administer for the Board, and much easier to maintain for the Legislature.

In a number of areas, the simplification of the statutes is achieved by giving the

board greater discretion to administer the statutes in light of expressly stated statutory policies. A good example are the statutes dealing with time limits for filing an application for compensation. Under current law, these statutes are extraordinarily detailed and complex. These statutory details reflect legislative reactions to particular cases as they have arisen. Unfortunately, the complexity makes the statutes very difficult to administer, and, more importantly, the details make it virtually impossible for the board to achieve justice in each case since, when new cases arise that are not dealt with by the existing statutes, the board has no discretion to create new exceptions. In order to address this problem, we propose amendments that give the board greater discretion to resolve these timing issues in light of factors that express the Legislature's general policy regarding time limits in the victims compensation program. *See* Section 13953.

In the remainder of this report, we present our proposed revision. Each section is accompanied by a comment that explains the major changes being proposed for that section.

GOVERNMENT CODE

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA

DIVISION 3. EXECUTIVE DEPARTMENT

PART 4. STATE BOARD OF CONTROL

CHAPTER 5. INDEMNIFICATION OF PRIVATE CITIZENS

ARTICLE 1. VICTIMS OF CRIME

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- 13969.1. Scope of compensation related to terrorist attacks occurring on September 11, 2001
- 13969.2. Reimbursement for mental health counseling for members of California trauma or search and rescue teams relating to terrorist attacks on September 11, 2001
- 13969.3. Allocation to victim compensation program related to terrorist attack on World Trade Center

Gov't Code § ~~13959~~ 13950. Declaration of public interest [amended]

~~13959~~ 13950. It is in the public interest to assist residents of the State of California in obtaining ~~restitution~~ *compensation* for the pecuniary losses they suffer as a direct result of criminal acts. This article shall govern the procedure by which crime victims may obtain ~~restitution through~~ compensation from the Restitution Fund.

Comment. Derivation: Section 13959.

The Victims of Crime article, which currently begins at Section 13959, is being reordered and renumbered to improve organizational clarity. In order to provide sufficient space for the recodification, the article is being moved to begin at Section 13950.

Technically, “restitution” generally refers to a civil remedy by which a person who has wrongfully deprived another of property is required to return the property to its rightful owner and to disgorge any benefits derived from that property. In the context of the crime victims movement, “restitution” often refers to the processes by which someone convicted of a crime is required to pay a crime victim for their losses. For example, Section 28(b) of Article I of the California Constitution provides that “It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.”

However, the right to compensation provided by this article is distinct from the right to restitution directly from a person convicted of a crime. First, the assistance provided by this article is more properly characterized as compensation for losses incurred instead of restitution for property wrongfully taken. For example, compensation for loss of income, which is authorized by this article, is more accurately described as compensation for losses than as restitution. Second, the assistance provided by this article comes in the form of payments out of the Restitution Fund instead of from judgments entered against specific persons convicted of

crimes (although the Restitution Fund itself is funded in part by payments from restitution fines levied against persons convicted of crimes).

Although the assistance provided by this article is distinct from the restitution which may be ordered in individual criminal trials, because the statutes in this article sometimes refer to "restitution," there has been some confusion between the program established by this article and other rights to restitution. In order to clarify these differences, the word "restitution" is being replaced throughout this article with the word "compensation." For similar reasons, the word "assistance," a very broad word which is used throughout the article to describe the benefits provided by the board, is being replaced with the word "compensation." However, the phrase "Restitution Fund" is being retained without change because that phrase is the name of a particular fund referenced in the budget.

Gov't Code § ~~13960~~ 13951. Definitions [amended]

~~13960~~ 13951. As used in this article:

(a) *"Board" means the California Victim Compensation and Government Claims Board.*

(b) *"Law enforcement" means every district attorney, municipal police department, sheriff's department, district attorney's office, county probation department, social services agency, Department of Justice, Department of Corrections, Department of the Youth Authority, Department of the California Highway Patrol, the police department of any campus of the University of California, California State University or community college, and every agency of the State of California expressly authorized by statute to investigate or prosecute law violators.*

(c) *"Peer counseling" means counseling offered by a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling within the State of California.*

(d) *"Victim centers" means the victim and witness assistance centers which receive funds pursuant to Section 13835.2 of the Penal Code.*

~~(a)(1) "Victim" means a resident of the State of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California who sustains injury or death as a direct result of a crime.~~

~~—— (2) "Derivative victim" means a resident of California, or resident of another state, who is one of the following:~~

~~—— (A) At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim.~~

~~—— (B) At the time of the crime was living in the household of the victim.~~

~~—— (C) A person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).~~

~~—— (D) Is another family member of the victim, including the victim's fiancé or~~

fiancée, and witnessed the crime.

—— (E) Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.

—— (b) (1) "Injury" includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261, 262, 271, 273a, 273d, 278, 278.5, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code, who sustains emotional injury is presumed to have sustained physical injury. For purposes of this article, a victim of a crime committed in violation of Section 270 of the Penal Code, as a result of conduct other than a failure to pay child support, who sustains emotional injury is presumed to have sustained physical injury if criminal charges were filed. For purposes of this article, a victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code, who sustains emotional injury, is presumed to have sustained physical injury if felony charges were filed.

—— (2) It is the intent of the Legislature that in order for the presumption set forth in paragraph (1) relating to a violation of Section 278 or 278.5 of the Penal Code to apply, the deprivation of custody as described in those sections shall have endured for not less than 30 days. For the purposes of this paragraph, the child, and not the nonoffending parent or other caretaker, shall be deemed the victim.

—— (3) A child who has been the witness of a crime or crimes of domestic violence may be presumed by the board to have sustained physical injury.

—— (c) "Crime" means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult that results in injury to a resident of this state, including a crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. "Crime" includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

—— (1) Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

—— (2) Injury or death caused by a driver in violation of Section 20001 of the Vehicle Code.

—— (3) Injury or death caused by a person who is under the influence of any alcoholic beverage or drug.

—— (4) Injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

—— (5) Injury or death caused by a person in violation of subdivision (c) of Section 192 or Section 192.5 of the Penal Code.

—— For the purpose of the limitations imposed by this article, a crime shall mean one act or series of related acts arising from the same course of conduct with the same

perpetrator or perpetrators against a victim.

~~—— (d) "Pecuniary loss" means the following expenses for which the victim or derivative victim has not been and will not be reimbursed from any other source:~~

~~—— (1) The amount of medical or medical-related expenses incurred by the victim, including inpatient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.~~

~~—— (2) The amount of outpatient psychiatric, psychological, or other mental health counseling related expenses that became necessary as a direct result of the crime. These counseling services may only be reimbursed if provided by any of the following individuals:~~

~~—— (A) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in psychiatry.~~

~~—— (B) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.~~

~~—— (C) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.~~

~~—— (D) A person licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.~~

~~—— (E) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code.~~

~~—— (F) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of Section 2909 of the Business and Professions Code.~~

~~—— (G) A person registered as a marriage and family therapist intern who is under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.~~

~~—— (H) A person registered as an associate clinical social worker, as defined in Section 4996.18 of the Business and Professions Code, who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist.~~

~~—— (I) A person who qualifies as a psychology intern as described in Section 2911 of the Business and Professions Code who is under the supervision of a licensed mental health professional (psychiatrist, psychologist, social worker, or marriage and family therapist) in a university hospital or university medical school clinic or a person who has completed the qualifications described in Section 2911 of the Business and Professions Code who is pursuing a postdoctoral and training in a university or university medical school clinic under the supervision of a licensed mental health professional (psychiatrist, psychologist, social worker, or marriage and family therapist) for the purpose of achieving higher clinical competency.~~

~~—— (J) A person licensed as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric mental health nursing and is listed as a psychiatric mental health nurse by the Board of Registered Nursing, or an advanced practice registered nurse certified as a clinical nurse specialist under Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code, who participates in expert clinical practice in the specialty of psychiatric mental health nursing.~~

~~—— (3) The loss of income that the victim or the loss of support that the derivative victim has incurred or will incur as a direct result of an injury or death.~~

~~—— (4) Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.~~

~~—— (5) The amount of family psychiatric, psychological, or mental health counseling expenses necessary as a direct result of the crime for the successful treatment of the victim, provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime.~~

~~—— (e) "Board" means the California Victim Compensation and Government Claims Board.~~

~~—— (f) "Victim centers" means those centers as specified in Section 13835.2 of the Penal Code.~~

~~—— (g) "Peer counselor" means a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling in consultation with a mental health practitioner licensed within the State of California.~~

~~—— (h) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.~~

Comment. Derivation: Section 13960.

The definitions are substantially rewritten in the interests of simplification and clarity and to remove from the definitions significant substantive provisions. As currently drafted, many of the most important substantive provisions are found in definitions of such words as “derivative victim,” “crime,” “injury,” and “pecuniary loss.” This is confusing because a correct understanding of the statute often requires flipping back and forth between sections (e.g., between the sections that set forth eligibility criteria and the definitions of the words used in those sections).

In order to clarify the limitations on compensation pursuant to this article, the substantive language that used to appear in this definition section has been relocated to other sections as appropriate. For example, the substantive language in current definitions that relate to eligibility (e.g., the definitions of “victim,” “derivative victim,” “crime,” and “injury”) now appears in Section 13955. The substantive language in current definitions that relate to the scope of compensation (e.g., the definition of “pecuniary

loss”) now appears in Section 13957.

The definition of “law enforcement” is a combination of language found in Penal Code §§ 290 & 1545.

The definition of “peer counseling” is based on the definition of “peer counselor” from subdivision (g) of Section 13960.

Gov’t Code § 13960.1. Indemnity fund renamed restitution fund [repealed]

~~13960.1. The Indemnity Fund is hereby renamed the Restitution Fund. All existing statutory references to the Indemnity Fund shall hereafter be considered references to the Restitution Fund.~~

Comment. All former references to the “Indemnity Fund” have been changed to the “Restitution Fund” rendering this section obsolete.

Gov’t Code § 13960.5. Nonresident victim [repealed]

~~13960.5. (a) Notwithstanding Section 13960, "victim" shall also include nonresidents of this state who suffer injury or death as a direct result of crimes occurring within this state.~~

~~—— (b) This section shall be operative only during those time periods during which the board determines that federal funds are available to the state for the compensation of victims of crime.~~

Comment. This modification to the definition of “victim” is being included without substantive change in subdivision (b) of Section 13955.

Gov’t Code § ~~13961~~ 13952. Application for compensation [amended]

~~13961 13952. (a) [Form of Application] A victim or derivative victim may file an application for assistance with the board. An application for compensation shall be filed with the board in the manner determined by the board.~~

~~(b) The board shall supply and make available an application form for this purpose. The form shall be in one part, in laymen's terms and shall be accompanied by information including, but not limited to, all of the following:~~

~~—— (1) The eligibility of applicants, the types of claims covered, and the maximum amount payable for these claims.~~

~~—— (2) Information explaining the procedure to be used to evaluate an applicant's claims.~~

~~—— (3) Other information pertinent to the applicant as deemed necessary by the board.~~

~~—— (4) Information about the existence and location of local victim centers.~~

~~—— (c)(1) The period prescribed for the filing of an application for assistance shall be one year after the date of the crime or one year after the victim attains 18 years of age, whichever is later.~~

~~—— (2) The board may for good cause grant an extension of the time period in paragraph (1) not to exceed three years after the date of the crime or after the victim attains 18 years of age, whichever is later.~~

~~—— (3) The board may grant an extension of the time period in paragraph (1) or (2) if~~

either subparagraph (A), (B), or (C) is true:

~~—— (A) The application is filed within one year from the date of the filing of an indictment, information, or complaint alleging the facts that gave rise to the application; and the prosecuting attorney recommends that the board find that the applicant cooperated with law enforcement and the prosecuting attorney in the apprehension and prosecution of the person charged with the crime, and the board so finds.~~

~~—— (B) A victim is called to testify in a criminal proceeding adjudicating the facts that gave rise to the application; the application is filed within one year of the completion of the victim's testimony; and the prosecuting attorney recommends that the board find that the applicant cooperated with law enforcement and the prosecuting attorney in the apprehension and prosecution of the person charged with the crime, and the board so finds.~~

~~—— (C) The application is filed within one year of the time that a formal written decision is made by the prosecuting attorney not to prosecute, and the prosecuting attorney recommends that the board find that the applicant cooperated with law enforcement and the prosecuting attorney in the investigation and consideration of the crime for prosecution, and the board so finds.~~

~~—— (d) The period prescribed for filing an application by or on behalf of a derivative victim shall be tolled when the board accepts the application filed by a victim of the same qualifying crime.~~

~~—— (e) (b) [Verification] The application for assistance compensation shall be verified under penalty of perjury by the individual who is seeking compensation who may be the victim or derivative victim, or an individual seeking reimbursement for burial, funeral or crime scene clean-up expenses pursuant to subdivision (i) of Section 13957. If the victim or derivative victim individual seeking compensation is a minor or is incompetent, the application shall be verified under penalty of perjury or on information and belief by the parent with legal custody or the legal guardian, guardian, conservator, or relative caregiver of the victim or derivative victim for whom the application is made. However, if a minor seeks compensation only for expenses for medical, medical-related, psychiatric, psychological, or other mental health counseling related services and the minor is authorized by statute to consent to such services, the minor may verify the application for compensation under penalty of perjury.~~

~~(f) (c) [Supporting Information] The board may require submission of additional information supporting the application which is reasonably necessary to verify the application and determine eligibility for compensation.~~

~~(d) [“Relative Caregiver”] For purposes of this section, “relative caregiver” means a relative as defined in subdivision (i) of Section 6550 of the Family Code, who assumed primary responsibility for the child while the child was in the relative's care and control, and who is not a biological or adoptive parent. The application shall contain all of the following:~~

~~—— (1) A description of the date, nature, and circumstances of the crime or public offense.~~

~~—— (2) A complete financial statement, including, but not limited to, the cost of~~

~~medical care or burial expense and the loss of wages that the victim or the loss of support that the derivative victim has incurred or will incur and the extent to which the applicant has been or will be indemnified for these expenses from any source.~~

~~—— (3) When appropriate, a statement indicating the extent of any disability resulting from the injury incurred.~~

~~—— (4) An authorization permitting the board or a local victim center, or both, to verify the contents of the application.~~

~~—— (5) Any other information as the board may require.~~

Comment. Derivation: Section 13961.

Subdivision (a) is amended to give the board greater flexibility in determining the content and format of the application for compensation. Among other things, this will give the board the ability to keep up with changing technologies, such as the ability to accept electronic, on-line applications.

Subdivision (b) requires verification of applications under penalty of perjury. Subdivision (b) is amended to clarify that an application may be filed by any individual, not just a victim or derivative victim, seeking reimbursement for expenses associated with funeral, burial or crime scene clean-up.

Subdivision (b) is amended to expand the group of persons who can verify an application on behalf of a minor or incompetent person to encompass conservators and “relative caregivers,” which is defined in subdivision (d) to include relatives who have primary responsibility for the minor.

Subdivision (b) is amended to permit a minor to verify an application for compensation for the expenses of medical or mental health services if the minor is otherwise authorized by statute to consent to such services. *See, e.g.,* Family Code § 6927 (minor who is 12 years of age or older may consent to medical care related to diagnosis and treatment of alleged rape).

Subdivision (c) is amended to give the board, in simple terms, broad authority to require the submission of such additional information as is necessary to process and verify an application.

The subdivisions relating to the time period for submitting an application are removed from this section and consolidated in Section 13953 with other provisions relating to the time period for submitting applications.

Gov’t Code § ~~13961.4~~ 13952.5. Emergency award procedure [amended]

~~13961.4~~ 13952.5. (a) An emergency award shall be available *to a person eligible for compensation pursuant to this article if the board determines that such an award is necessary to avoid or mitigate substantial hardship that may result from delaying compensation until complete and final consideration of an application.* ~~for a victim or~~

derivative victim if any of the following occur as a result of the crime:

~~—— (1) The victim incurs loss of income or the derivative victim incurs loss of support.~~

~~—— (2) The victim requires emergency medical treatment.~~

~~—— (3) The victim dies as a result of the crime and any individual, without anticipation of personal gain, incurs the funeral and burial expense.~~

~~—— (4) The victim is a victim of sexual assault or domestic violence in need of those relocation expenses authorized by paragraph (4) of subdivision (a) of Section 13965.~~

(b) *The board shall establish the method for requesting an emergency award, which may include requiring submission of the regular application as provided for in section 13952. Emergency award application forms shall be provided by the board upon request of the applicant. The board shall make available the application forms through all means at its disposal.*

(c) The board may grant an emergency award based solely on the application of the victim or derivative victim. Disbursements of funds for emergency awards shall be made within 30 business days of application. The board may refuse to grant an emergency award where it has reason to believe that the applicant will not *be eligible for compensation* qualify for an award for assistance under this article. The board may delegate authority to designated staff persons and local agencies, including, but not limited to, district attorneys, probation departments, ~~and local~~ victim witness centers, *and other victim service providers approved by the board and under contract with the board*, who will use guidelines established by the board, to grant and disburse emergency awards. By mutual agreement between the staff of the board and the applicant or the applicant's representative, the staff of the board or the applicant's representative may take additional 10-day periods to verify the emergency award claim and make payment.

(d) An applicant for an emergency award is not entitled to a hearing before the board to contest a denial of an emergency award. *However, denial of an emergency award does not prevent further consideration of the application for a regular award and does not affect the applicant's right to a hearing pursuant to section 13959 if staff recommends denial of a regular award.* ~~However, the applicant may submit an application for a regular award and is entitled to a hearing pursuant to Section 13963 if that application is recommended for denial.~~

~~(e) The application for an emergency award shall notify the applicant that he or she must complete the regular application within one year of the date of the crime.~~

~~(f)~~ (e) If upon final disposition of the regular application, it is found that the applicant is not eligible for *assistance compensation* from the board, the applicant shall reimburse the board for the emergency award pursuant to an agreed upon repayment schedule. If upon a final disposition of the application, the board grants *assistance compensation* to the applicant, the amount of the emergency award shall be deducted from the final award of compensation *granted*. If the amount of the *grant compensation* is less than the amount of the emergency award, the excess amount shall be *treated as an overpayment pursuant to section 13965 repaid according to an agreed upon repayment schedule*. Final disposition for the purposes of this section shall mean the final decision

of the board with respect to the victim's or derivative victim's application ~~for assistance~~, before any ~~appellate~~ action *for judicial review* is instituted. If an application for an emergency award is denied, the board shall notify the applicant in writing of the reasons for the denial.

~~(g)~~ (f) The amount of the emergency award shall be dependent upon the immediate needs of the victim or derivative victim *subject to rates and limitations established by the board*. ~~as evidenced by the victim's loss of income or the derivative victim's loss of support, the funeral and burial expenses incurred on behalf of the victim, and other losses incurred as a direct result of the crime before filing or reasonably anticipated during the first 90 days after the initial filing of an application. Except for applications filed pursuant to paragraph (3) of subdivision (a), in no event shall the amount of the emergency award exceed two thousand dollars (\$2,000). Where an application has been filed pursuant to paragraph (3) of subdivision (a), the amount of the emergency award shall not exceed five thousand dollars (\$5,000).~~

~~_____ (h) The emergency award application shall require only the following:~~

~~_____ (1) The name, address, and telephone number of the victim or derivative victim on whose behalf the application is made.~~

~~_____ (2) A brief description of the nature and circumstances of the crime, including the date and location.~~

~~_____ (3) The date the crime was reported to a law enforcement agency and the name and address of the agency.~~

~~_____ (4) The name, address, and telephone number of the employer or self employing entity, the loss of income or support to date and estimate of future loss.~~

~~_____ (5) The nature of the injury and the name, address, and telephone number of medical providers and the cost of medical care incurred to date.~~

~~_____ (6) The name, address, and telephone number of the funeral and burial providers and the cost of funeral and burial expenses incurred to date.~~

~~_____ (7) A statement that in the event the applicant is later found ineligible for assistance under this article or the final award is less than the emergency award, the applicant will be required to repay the excess amount.~~

~~_____ (8) The applicant's signature and a statement that the information is supplied under penalty of perjury, violation of which is punishable by six months in the county jail.~~

~~_____ (i) Where an application has been filed pursuant to paragraph (3) of subdivision (a), the application for the emergency award shall additionally contain the following:~~

~~_____ (1) A statement that in the event the applicant receives reimbursement from another source, including, but not limited to, court ordered restitution or life insurance, either in whole or in part for the funeral and burial expenses incurred on behalf of the victim, that the applicant will be required to repay the board.~~

~~_____ (2) A complete copy of the report regarding the incident and any supplemental reports involving the crime, public offense, or incident giving rise to the claim, as prepared by a law enforcement agency pursuant to subdivision (d) of Section 13968. This report may, at the discretion of the law enforcement agency and as provided in subdivision (e) of Section 13968, exclude the names of witnesses or informants, if the~~

~~release of this information would be detrimental to the parties or to an investigation currently in progress.~~

Comment. Derivation: Section 13961.1.

This section is taken from Section 13961.1. The board has combined its emergency and regular application forms. In light of this practice, this section is amended to remove language that refers to or depends upon a bifurcated application process.

Subdivision (a) is amended to expand the scope of emergency awards to encompass any type of compensation authorized by the article. There is no good reason to limit emergency awards to the specified list of reimbursable losses. The question for the board in each case should simply be whether there is an immediate need for compensation. Subdivision (a) is therefore amended to require simply a finding that an emergency award is necessary to avoid “substantial hardship” from delaying compensation.

Subdivision (c) is amended to provide that emergency awards shall be disbursed in “30 days,” which pursuant to Gov’t Code § 6806, means 30 calendar days instead of 30 business days. Every other time-frame in this article is based on calendar days, and there is no justification for delaying the disbursement of an emergency award beyond 30 calendar days.

Gov’t Code § 13961.01. Claim extension; circumstances [repealed]

~~13961.01. (a) In addition to the additional extension for good cause authorized under Section 13961, the board may also for good cause grant an additional extension beyond three years when the claim is filed under any of the following circumstances:~~

~~—— (1) The application is filed by a minor derivative victim where the direct victim is permanently disabled or has died as a result of the crime.~~

~~—— (2) The application is filed based on a crime described in Section 261, 286, 288, 288a, 288.5, or 289 of the Penal Code, or penetration of an anal or genital opening as described in Section 289.5 of the Penal Code as it existed prior to January 1, 1995, and all of the following criteria are met:~~

~~—— (A) The victim was under the age of 18 years at the time the crime was committed.~~

~~—— (B) The crime was reported to a law enforcement agency, as defined in subdivision (p) of Section 290 of the Penal Code, or a child protective agency, as defined in Section 11165.9 of the Penal Code.~~

~~—— (C) The application is accompanied by either of the following:~~

~~—— (i) A copy of the report of the crime filed with an agency described in subparagraph (B) and a recommendation from either the investigating officer or the prosecuting attorney that the application for late filing be approved, and the application is filed within one year of the date the victim receives the recommendation.~~

~~—— (ii) Documentation that a complaint, information, or indictment alleging the crime giving rise to the application was filed.~~

~~—— (3) The direct victim has died as a result of the crime, but the fact is not discovered until after the expiration of the time limits imposed by this section.~~

~~—— (4) The application is filed by a victim or derivative victim of a crime for which the perpetrator or perpetrators received a sentence of death or life without possibility of parole and either of the following is true:~~

~~—— (A) The prosecuting attorney or a law enforcement officer documents that the victim or derivative victim filing the application was not informed of the provisions of this chapter within the time period for filing an application under subdivision (c) of Section 13961.~~

~~—— (B) The victim or derivative victim filing the application provides documentation that he or she received notice from the Board of Prison Terms, the Attorney General, or the prosecuting district attorney's office that a date was set for a clemency hearing or an execution of the perpetrator or perpetrators.~~

~~—— (b) No application shall be denied under paragraphs (1) to (4), inclusive, of subdivision (a) solely because the crime was not reported to law enforcement within a specified time period.~~

~~—— (c) For the purposes of this section, the board may consider applications filed with the board on or after October 4, 1993, that meet the criteria for delayed filing as set forth in subdivision (a).~~

~~—— (d) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.~~

Comment. This section is repealed. All sections dealing with the time period for submitting applications are consolidated in Section 13953.

Gov't Code § 13961.05. Additional extension for good cause; conditions [repealed]

~~13961.05. (a) In addition to the extension for good cause for the filing of an application authorized under Section 13961, the board may also for good cause grant an additional extension when the claim is filed under either of the following circumstances:~~

~~—— (1) The application is filed by a person who is called to testify in a proceeding against a defendant as a victim or derivative victim of prior acts of the defendant pursuant to Section 1108 or 1109 of the Evidence Code and the application is filed within one year of the completion of the person's testimony, is accompanied by a recommendation from the prosecuting attorney that the application be accepted, and includes a copy of the crime report or other official documentation describing the offense of which the person was the victim or derivative victim.~~

~~—— (2) The application is filed by a victim of a sexually violent offense who is called to testify in a proceeding involving that offender pursuant to Section 6603 of the Welfare and Institutions Code, and the application is filed within one year of the completion of the victim's testimony and is accompanied by a copy of the crime report or other official documentation describing the offense.~~

~~—— (b) No application shall be denied under paragraph (1) or (2) of subdivision (a) solely because the crime was not reported to law enforcement within a specified time period.~~

Comment. This section is repealed. All sections dealing with the

time period for submitting applications are consolidated in Section 13953.

Gov't Code § 13961.2. Payment of emergency awards; limitation [repealed]

~~13961.2. A sum not to exceed 15 percent of the amount appropriated annually to pay claims pursuant to this article may be withdrawn from the Restitution Fund, to be used as a revolving fund by the board for the payment of emergency awards made pursuant to Section 13961.1.~~

Comment. This section, which deals with appropriations from the Restitution Fund for payment of emergency awards, is repealed, and its substantive content is relocated to Section 13964, which deals generally with appropriations from the Restitution Fund.

Gov't Code § 13961.3. Victim compensation form committee [repealed]

~~13961.3. A Victim Compensation Form Committee shall be established by the board to develop or revise, or both, the application form described in this article. The committee shall consist of one representative from and appointed by the board and two representatives from local victim centers appointed by the executive director of the Office of Criminal Justice Planning.~~

Comment. This section is repealed. The forms committee completed the initial work of developing an application form, and continuing review of that form is now undertaken by a standing advisory victims committee.

Gov't Code § 13953. Time for filing application [added]

13953. (a) [Time for Filing] An application for compensation shall be filed within one year of the date of the crime, or one year after the victim attains 18 years of age, or one year of the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered that an injury or death had been sustained as a direct result of crime, whichever is later.

(b) [Good Cause Exception] The board may for good cause grant an extension of the time period in subdivision (a). In making this determination, the board may consider any relevant factors including, but not limited to, the following:

(1) a recommendation from the prosecuting attorney regarding the victim's or derivative victim's cooperation with law enforcement and the prosecuting attorney in the apprehension and prosecution of the person charged with the crime;

(2) whether particular events occurring during the prosecution or in the punishment of the person convicted of the crime have resulted in the victim or derivative victim incurring additional pecuniary loss;

(3) whether the nature of the crime is such that a delayed reporting of the crime is reasonably excusable.

(c) [Tolling] The period prescribed for filing an application by or on behalf of a derivative victim shall be tolled when the board accepts the application filed by a victim of the same qualifying crime.

Comment. Derivation: Sections 13961(c) & (d), 13961.01, 13961.05.

Provisions dealing with the time for filing applications are consolidated in this new, substantially simplified section.

Subdivision (a) is based on subdivision (c) of Section 13961. Subdivision (c) of Section 13961 permits filings within one year of the date of crime or one year after the victim attains 18 years of age. Subdivision (a) of this section has been expanded to include a general “discovery” provision so that the time period for filing an application does not begin to run until an applicant knows or should know that a crime has been committed. This discovery provision will encompass cases where there has been a delayed discovery that a crime has been committed (e.g., where it does not become clear for some time whether a person has died of natural causes or has been the victim of a crime).

Separate provisions authorizing an extension of the time for filing for good cause in particular circumstances and for particular periods of time (e.g., existing Sections 13961.01 and 13961.05) are consolidated in subdivision (b). These provisions have been substantially simplified and redrafted so that, as now drafted, the board would have greater discretion than under current law in resolving the question of whether good cause exists for permitting a late filing.

Gov’t Code § 13954. Verification [added]

13954. (a) [Verification Process] The board shall verify with hospitals, physicians, law enforcement officials, or other interested parties involved, the treatment of the victim or derivative victim, circumstances of the crime, amounts paid or received by or for the victim or derivative victim, and other pertinent information as may be deemed necessary by the board. Verification information shall be returned to the board within 10 business days after a request for verification has been made by the board. Verification information shall be provided at no cost to the applicant, the board, or victim centers. When requesting verification information, the board shall certify that a signed authorization by the applicant is retained in the applicant's file and that this certification constitutes actual authorization for the release of information, notwithstanding any other provision of law. If requested by a physician or mental health provider, the board shall provide a copy of the signed authorization for the release of information.

(b) [Cooperation] The victim and the applicant, if other than the victim, shall cooperate with the staff of the board or the victim center in the verification of the information contained in the application. Failure to cooperate shall be reported to the board, which, in its discretion, may reject the application on this ground alone.

(c) [Contracts] The board may contract with victim centers to provide verification of applications processed by the centers pursuant to conditions stated in subdivision (a). The board and its staff shall cooperate with the Office of Criminal Justice Planning and

victim centers in conducting training sessions for center personnel and shall cooperate in the development of standardized verification procedures to be used by the victim centers in the state. The board and its staff shall cooperate with victim centers in disseminating standardized board policies and findings as they relate to the centers.

(d) [Juvenile Records] Notwithstanding Section 827 of the Welfare and Institutions Code or any other provision of law, every law enforcement and social service agency in the state shall provide to the board or to victim centers which have contracts with the board pursuant to subdivision (c), upon request, a copy of a petition filed in a juvenile court proceeding, reports of the probation officer, any other document made available to the probation officer or to the judge, referee, or other hearing officer, a complete copy of the report regarding the incident and any supplemental reports involving the crime, public offense, or incident giving rise to a claim, for the specific purpose of the submission of a claim or the determination of eligibility to submit a claim filed pursuant to this article. The board and victim centers receiving records pursuant to this subdivision shall not disclose a document that personally identifies a minor to anyone other than the minor who is so identified, his or her custodial parent or guardian, the attorneys for those parties, and any other persons as may be designated by court order. Any information received pursuant to this section shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated. A violation of this subdivision is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

(e) [Witness Confidentiality] The law enforcement agency supplying the information may, at its discretion, withhold the names of witnesses or informants from the board, if the release of such names would be detrimental to the parties or to an investigation currently in progress.

(f) [Obligation to Respond] Notwithstanding any other provision of law, every state agency, upon receipt of a copy of a release signed in accordance with the Information Practices Act of 1977 by the applicant or other authorized representative, shall provide to the board or victim center the information necessary to complete the verification of an application filed pursuant to this article.

(g) [Department of Justice] The Department of Justice shall furnish, upon application of the board, all information necessary to verify the eligibility of any applicant for benefits pursuant to Section 13956.5, to recover any restitution fine or order obligations that are owed to the Restitution Fund or to any victim of crime, or to evaluate the status of any criminal disposition.

(h) [Privileges] A privilege is not waived under Section 912 of the Evidence Code by an applicant consenting to disclosure of an otherwise privileged communication if that disclosure is deemed necessary by the board for verification of the application.

Comment. Derivation: Sections 13962, 13962.5, 13968.

Subdivisions (a), (b) and the first sentence in subdivision (c) are based upon subdivisions (b)-(d) of Section 13962. Subdivision (a) is amended to give the board greater flexibility in the manner in which it verifies applications and supporting information. Existing law provides

that the board shall verify by sending “supplemental forms” to hospitals, physicians, law enforcement and others. However, there are a variety of more effective and efficient mechanisms for verifying information which the board now uses. Subdivision (a) is amended to permit these administrative improvements.

Current law requires the board to send a copy of a signed authorization for release of information to a physician notwithstanding the requirement that the board certify that it has such a signed authorization on file. For many physicians, the certification that such an authorization is on file is sufficient evidence of consent, and the requirement that a copy be sent to every physician creates an unnecessary expense and administrative burden. Therefore, subdivision (a) is amended so that the board is required to send a copy of a signed authorization to both a physician and mental health provider only on request.

The second sentence of subdivision (c) is taken from Section 13962.5 without substantive change. Subdivisions (d) through (h) are taken without substantive change from subdivisions (d) through (h) of Section 13968.

Gov’t Code § ~~13964~~ 13955. Eligibility for compensation [amended]

~~13964~~ 13955. *Except as provided in Section 13956, a person is eligible for compensation when all of the following requirements are met:*

(a) [Permissible Applicants] The person for whom compensation is being sought is

(1) a victim, which means an individual who sustains injury or death as a direct result of a crime as specified in subdivision (e),

(2) a derivative victim, which means an individual who sustains pecuniary loss as a result of injury or death to a victim, or

(3) a person who is entitled to reimbursement for expenses of funeral, burial or crime scene clean-up pursuant to subdivision (i) of Section 13957.

(b) [Location of Crime] (1) The crime occurred within the State of California; provided that this paragraph shall apply only during those time periods during which the board determines that federal funds are available to the State of California for the compensation of victims of crime; or,

(2) Whether or not the crime occurred within the State of California, the victim was

(A) a resident of the State of California,

(B) a member of the military stationed in California, or

(C) a family member living with a member of the military stationed in California.

(c) [Derivative Victim] If compensation is being sought for a derivative victim, the derivative victim is a resident of California or resident of another state who

(1) at the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim;

(2) at the time of the crime was living in the household of the victim;

(3) at the time of the crime was a person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (1);

(4) is another family member of the victim, including the victim's fiancée or fiancée, and who witnessed the crime; or,

(5) is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.

(d) [Timeliness] *The application is timely pursuant to Section 13953.*

(e) [Crime] *(1) Except as provided in paragraph (2), the injury or death was a direct result of a crime, which means a crime or public offense, wherever it may take place, that would constitute a misdemeanor or a felony if the crime had been committed in California by a competent adult.*

(2) Notwithstanding paragraph (1), no act involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death constitutes a crime for the purposes of this article, except when the injury or death from such an act was:

(A) intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle;

(B) caused by a driver who fails to stop at the scene of an accident in violation of Section 20001 of the Vehicle Code;

(C) caused by a person who is under the influence of any alcoholic beverage or drug;

(D) caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated; or,

(E) caused by a person who commits vehicular manslaughter in violation of subdivision (c) of Section 192 or Section 192.5 of the Penal Code.

(f) [Injury] *As a direct result of the crime, the victim or derivative victim sustained one or more of the following:*

(1) physical injury, provided that the board may presume a child who has been the witness of a crime of domestic violence has sustained physical injury.

(2) emotional injury and a threat of physical injury.

(3) emotional injury where the crime was a violation of

(A) Section 261, 262, 271, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code;

(B) Section 270 of the Penal Code, the emotional injury was a result of conduct other than a failure to pay child support, and criminal charges were filed;

(C) Section 261.5 of the Penal Code, and criminal charges were filed; or,

(D) Section 278 or 278.5 of the Penal Code and the deprivation of custody as described in those sections shall have endured for 30 days or more. For purposes of this paragraph, the child, and not the nonoffending parent or other caretaker, shall be deemed the victim.

(g) [Pecuniary Loss] The injury or death has resulted or may result in pecuniary loss within the scope of compensation pursuant to Sections 13957 through 13957.4.

~~(a) After having heard the evidence relevant to the application for assistance, the board shall approve the application if a preponderance of the evidence shows that as a direct result of the crime the victim or derivative victim incurred an injury that resulted in a pecuniary loss.~~

~~—— (b) An application for assistance may be denied, in whole or in part, if the board finds that denial is appropriate because of the nature of the victim's or other applicant's involvement in the events leading to the crime or the involvement of the persons whose injury or death give rise to the application. In the case of a minor, the board shall consider the minor's age, physical condition, and psychological state as well as any compelling health and safety concerns in determining whether the minor's application should be denied pursuant to this section.~~

~~—— (c) No victim shall be eligible for assistance under this article under either of the following circumstances:~~

~~—— (1) The board finds that the victim knowingly and willingly participated in the commission of the crime. This paragraph shall not apply if the injury occurred as a direct result of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code.~~

~~—— (2) The board finds that the victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime. In the case of a minor, the board shall consider the minor's age, physical condition, and psychological state as well as any compelling health and safety concerns in determining whether the minor is eligible for assistance pursuant to this section.~~

~~—— (d) No derivative victim shall be eligible for assistance under this article under either of the following circumstances:~~

~~—— (1) The board finds that the victim or derivative victim knowingly and willingly participated in the commission of the crime.~~

~~—— (2) The board finds that the victim or derivative victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.~~

~~—— (e) Notwithstanding paragraph (2) of subdivision (c) and paragraph (2) of subdivision (d), for claims based on domestic violence the Board of Control shall adopt guidelines that allow the board to consider and approve applications for assistance based on domestic violence, taking into account the victim's age, physical condition, psychological state, and any compelling health or safety reasons, including, but not limited to, a reasonable fear of retaliation or harm that would jeopardize the well being of the victim or the victim's family, in evaluating a victim's cooperation with law enforcement, and giving due consideration to the degree of cooperation of which the victim is capable in light of the presence of any of these factors.~~

~~—— For the purposes of this section, the application of a derivative victim of domestic violence under the age of 18 years shall not be deemed ineligible on the basis of ineligibility of the victim under subdivision (b).~~

~~——(f) No application shall be denied solely because no criminal complaint has been filed, unless the complaint has not been filed for one of the reasons stated in subdivision (c) or (d). Moreover, no application shall be denied because a criminal complaint is filed, but later dismissed, if the dismissal is not for the reasons stated in subdivision (c) or (d).~~

~~——(g) Once an application has been accepted by the board pursuant to subdivision (b) of Section 13962, as the application pertains to medical or medical-related expenses, the claim shall continue to be processed and either awarded or denied pursuant to this article in the event of the death of the applicant.~~

~~——(h) If a nonoffending parent in a child sexual abuse case cooperates with the prosecution or Child Protective Services by providing assistance to law enforcement in the disposition of the case, that parent shall not be considered uncooperative within the meaning of this section and shall be eligible, if otherwise qualified, for restitution as a derivative victim pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 13965.~~

~~——(i) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.~~

Comment. Derivation: Sections 13960, 13960.5, 13964.

Under existing law, subdivision (c) of Section 13963 requires an applicant to prove that “as a direct result of a crime, the victim or derivative victim incurred an injury that resulted in a pecuniary loss.” Although this appears on its face to be a straightforward showing, the actual elements are much more complex because the words “crime”, “victim”, “derivative victim”, “injury”, and “pecuniary loss” are given very extensive and non-intuitive definitions in Section 13960. One of the major improvements being sought in this recodification is to move these complex substantive provisions out of the definitions and to put them where they belong, along with other substantive provisions dealing with eligibility for compensation. All of the basic eligibility provisions are now consolidated in this section.

Subdivision (a) clarifies who may seek compensation pursuant to this article.

Subdivision (b), which deals with the location of crimes, is taken without substantive change from subdivision (a)(1) of Section 13960 and Section 13960.5.

Subdivision (c), which identifies the relationships that qualify someone as a “derivative victim,” is taken without substantive change from subdivision (a)(2) of Section 13960.

Subdivision (e), which defines the type of “crimes” that fall within the scope of the article, is taken from the definition of “crime” contained in subdivision (c) of Section 13960.

Subdivision (f), dealing with types of injuries, is taken from the definition of “injury” in subdivision (b) of Section 13960.

Gov't Code § ~~13960.6~~ 13955.5. Nonresident of the United States derivative victims [amended]

~~13960.6~~ 13955.5. (a) Notwithstanding the residency requirement of ~~paragraph (2)~~ of subdivision ~~(a)~~ (c) of Section ~~13960~~ 13955, a nonresident of the United States who meets the other requirements of that ~~paragraph~~ subdivision shall be deemed to be a "derivative victim" for purposes of this chapter and may be reimbursed for outpatient mental health counseling when that mental health counseling is necessary as a direct result of a crime that occurred in this state, in the amounts set forth in this chapter.

(b) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

Comment. Derivation: Section 13960.6.

This temporary expansion of "derivative victim" to encompass nonresidents of the United States when a crime has occurred in this state is retained without substantive change.

If the Legislature ultimately decides to make this a permanent change in the law, it is recommended that instead of merely deleting the sunset date and leaving Section 13955.5 as a stand-alone section, the change be made by amending subdivision (c) of Section 13955. Part of the confusion which currently exists in this article has been the result of enacting temporary exceptions and new programs as in stand-alone sections with sunset dates and then simply removing the sunset date to make the temporary change permanent. The result has been to create in this article multiple sections that ultimately deal with the same subject matter, a confusing drafting practice.

Gov't Code § 13956. Grounds for Denial of Application [added]

13956. *Notwithstanding Section 13955, a person is not eligible for compensation as follows:*

(a) [Participation in Crime] An application shall be denied if the board finds that the victim or, where compensation is sought by or on behalf of a derivative victim, either the victim or derivative victim, knowingly and willingly participated in the commission of the crime which resulted in the pecuniary loss for which compensation is being sought pursuant to this article; except that this subdivision shall not apply if the injury or death occurred as a direct result of a crime of unlawful sexual intercourse with a minor committed in violation of subdivision (d) of Section 261.5 of the Penal Code.

(b) [Failure to Cooperate] An application shall be denied if the board finds that the victim or, where compensation is sought by or on behalf of a derivative victim, either the victim or derivative victim, failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime; provided that in determining whether cooperation has been reasonable, the board shall consider the victim's or derivative victim's age, physical condition, psychological state, and any compelling health and safety concerns, including, but not limited to, a reasonable fear of

retaliation or harm that would jeopardize the well-being of the victim or the victim's family or the derivative victim or the derivative victim's family, and giving due consideration to the degree of cooperation of which the victim or derivative victim is capable in light of the presence of any of these factors.

(c) [General Involvement] An application for compensation may be denied, in whole or in part, if the board finds that denial is appropriate because of the nature of the victim's or other applicant's involvement in the events leading to the crime or the involvement of the persons whose injury or death gives rise to the application. In the case of a minor, the board shall consider the minor's age, physical condition, and psychological state as well as any compelling health and safety concerns in determining whether the minor's application should be denied pursuant to this section. The application of a derivative victim of domestic violence under the age of 18 years shall not be denied on the basis of the denial of the victim's application under this subdivision.

Comment. Derivation: Sections 13964(b),(c), (d), (e) & (h).

Subdivision (a), which deals with a victim's participation in the underlying crime, is taken from subdivisions (c)(1) and (d)(1) of Section 13964.

Subdivision (b), dealing with cooperation in an investigation, is taken from subdivisions (c)(2), (d)(2), (e), and (h) of section 13964.

Subdivision (c), dealing with general involvement in the events leading to the crime, is taken from subdivision (b) of Section 13964.

Gov't Code § ~~13960.2~~ 13956.5. Person convicted of felony [amended]

~~13960.2~~ 13956.5. (a) Notwithstanding Section 13955, for purposes of this article, "victim" does not include any person who is convicted of a felony until that person has been discharged from probation or has been released from a correctional institution and has been discharged from parole, if any. In no case shall ~~assistance~~ *compensation* be granted to an applicant ~~for assistance~~ pursuant to this article during any period of time the applicant is held in a correctional institution.

(b) A victim who has been convicted of a felony may apply for ~~assistance~~ *compensation* pursuant to this article at any time, but the award of that ~~assistance~~ *compensation* shall not be considered until the applicant meets the requirements of subdivision (a).

(c) ~~Assistance~~ *Compensation* may be granted to a victim who is also a felon only after the application of victims who are not felons has been acted upon by the board and all awards granted by the board for ~~assistance~~ *compensation* to the nonfelon applicants have been made.

Comment. Derivation: Section 13960.2.

This restriction on compensation to felons is being retained without substantive change. The word "assistance" is being changed to "compensation" throughout this article to indicate more precisely the type of assistance actually available. The change is non-substantive.

Gov't Code § 13957. Scope of compensation [added]

13957. The total award to or on behalf of each victim or derivative victim shall not exceed thirty-five thousand dollars (\$35,000), which shall be increased to seventy thousand dollars (\$70,000) if federal funds for those increases are available. The board may grant the following compensation for pecuniary loss, which means economic losses or expenses resulting from an injury or death to a victim of crime that have not been and will not be reimbursed from any other source, which the board determines will best aid the person seeking compensation:

(a) [Medical Expenses] Subject to the limitations set forth in Section 13957.1, reimburse the amount of medical or medical-related expenses incurred by the victim, including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(b) [Mental Health Expenses] Subject to the limitations set forth in Section 13957.1, reimburse the amount of outpatient psychiatric, psychological, or other mental health counseling related expenses incurred by the victim or derivative victim, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code and including family psychiatric, psychological, or mental health counseling for the successful treatment of the victim provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime, that became necessary as a direct result of the crime, subject to the following provisions:

(1) The following persons may be reimbursed for the expense of their outpatient mental health counseling in an amount not to exceed ten thousand dollars (\$10,000):

(A) A victim;

(B) A derivative victim who is the surviving parent, sibling, child, spouse, or fiancé of a victim of a crime which directly resulted in the death of the victim;

(C) A derivative victim, as defined in subparagraphs (1) through (4) of subdivision (c) of Section 13955, who is the primary caretaker of a minor victim whose claim is not denied or reduced pursuant to Section 13956 in a total amount not to exceed ten thousand dollars (\$10,000) for not more than two derivative victims.

(2) The following persons may be reimbursed for the expense of their outpatient mental health counseling in an amount not to exceed three thousand dollars (\$3,000):

(A) A derivative victim not eligible for reimbursement pursuant to paragraph (1) provided that mental health counseling of a derivative victim as defined in subparagraph (5) of subdivision (c) of Section 13955, shall be reimbursed only if that counseling is necessary for the treatment of the victim.

(B) A victim of a crime of unlawful sexual intercourse with a minor committed in violation of subdivision (d) of Section 261.5 of the Penal Code. A derivative victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code shall not be eligible for reimbursement of mental health counseling expenses. The total award to or on behalf of a victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code shall not exceed three thousand dollars (\$3,000) for mental

health counseling expenses only.

(3) The board may reimburse a victim or derivative victim for outpatient mental health counseling in excess of that authorized by paragraphs (1) or (2) or for inpatient psychiatric, psychological, or other mental health counseling if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(4) Expenses for psychiatric, psychological, or other mental health counseling related services may be reimbursed only if the services were provided by the following individuals:

(A) a person who would have been authorized to provide such services pursuant to the provisions of this article as operative on January 1, 2002; or,

(B) a person who is licensed by the state to provide such services, or who is properly supervised by a person who is so licensed, subject to the board's approval and subject to such limitations and restrictions as the board may impose.

(c) **[Religious Method of Healing]** Reimburse the expenses of nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(d) **[Loss of Income or Support]** Subject to the limitations set forth in Section 13957.2, authorize compensation equal to the loss of income or loss of support, or both, which a victim or derivative victim incurs as a direct result of the victim's or derivative victim's injury or death. If the victim or derivative victim requests that the board give priority to reimbursement of loss of income or support, the board shall not pay medical expenses or mental health counseling expenses except upon the request of the victim or derivative victim or after determining that payment of these expenses will not decrease the funds available for payment of loss of income or support.

(e) **[Job Retraining]** Authorize a cash payment to or on behalf of the victim for job retraining or similar employment-oriented services.

(f) **[Residential Security]** Reimburse the expense for installing or increasing residential security, not to exceed one thousand dollars (\$1,000), with respect to a crime that occurred in the victim's residence upon verification by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim. Installing or increasing residential security may include, but need not be limited to, both of the following:

(1) Home security device or system.

(2) Replacing or increasing the number of locks.

(g) **[Disability Access]** Reimburse the expense of renovating or retrofitting a victim's residence or a vehicle, or both, to make the residence, the vehicle, or both, accessible or the vehicle operational by a victim upon verification that the expense is medically necessary for a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total.

(h) **[Relocation]** Authorize a cash payment or reimbursement not to exceed two thousand dollars (\$2,000) to a victim for expenses incurred in relocating, if the expenses are determined by law enforcement to be necessary for the personal safety of the victim

or by a mental health treatment provider to be necessary for the emotional well-being of the victim. When a relocation payment or reimbursement is provided to a victim of sexual assault or domestic violence and the identity of the offender is known to the victim, the victim shall agree not to inform the offender of the location of the victim's new residence and not to allow the offender on the premises at any time, or shall agree to seek a restraining order against the offender. The cash payment or reimbursement made under this subdivision shall only be awarded once to any victim, except that the board may, under compelling circumstances, award a second cash payment or reimbursement to the same victim if both of the following conditions are met:

(1) The crime occurs more than three years from the date of the crime giving rise to the initial relocation cash payment or reimbursement.

(2) The crime does not involve the same offender.

(i) [Funeral, Burial and Crime Scene Clean-Up] When a victim dies as a result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay the following expenses:

(1) The medical, funeral or burial expenses incurred as a direct result of the crime in an amount not to exceed the rates or limitations established by the board.

(2) When the crime occurs in a residence, the reasonable costs to clean the scene of the crime in an amount not to exceed one thousand dollars (\$1,000). Services reimbursed pursuant to this subdivision shall be performed by persons registered with the State Department of Health Services as trauma scene waste practitioners in accordance with Chapter 9.5 (commencing with Section 118321) of Part 14 of Division 104 of the Health and Safety Code.

Comment. Derivation: Section 13960, 13965.

The \$35,000 cap is taken from Section 13965(a)(10). The \$70,000 cap is taken from 13965(f).

Subdivision (a) is taken without change from the definition of "pecuniary loss" in Section 13960(d)(1).

Subdivision (b) is a combination of sections dealing with mental health, including Section 13960(d)(2), Section 13960(d)(5) and Section 13965(1). Under current law, a derivative victim is eligible only for outpatient mental health counseling, subject to monetary caps, while a victim is eligible for both inpatient mental health counseling and outpatient mental health counseling. Subdivision (b) is amended so that victims and derivative victims are treated alike with respect to inpatient and outpatient mental health counseling. As amended, outpatient mental health counseling is still subject to the \$10,000 and \$3,000 caps of existing law, and inpatient counseling and outpatient counseling in excess of the caps is available only in "dire or exceptional circumstances" pursuant to subdivision (b)(3).

Subdivision (c) is taken without change from Section 13960(d)(4).

Subdivision (d) is based on Section 13960(d)(3).

Subdivision (e) is taken from Section 13965(a)(5).

Subdivision (f) is taken from Section 13965(a)(6).

Subdivision (g) is taken from Section 13965(a)(7).

Subdivision (h) is taken from Sections 13965(a)(4).

Subdivision (i) is taken from Section 13965(a)(9) and 13965(a)(13).

Section 13965(a)(9) authorized reimbursement for medical or burial expenses. Subdivision (i) has been amended to add “funeral” expenses which the board has been awarding as part of burial expenses.

Gov’t Code § 13957.1. Limitations on Reimbursable Medical and Mental Health Expenses [added]

13957.1. (a) [Rates and Service Limits for Medical and Mental Health Expenses] The board may establish maximum rates and service limitations for reimbursement of medical and medical-related services and for mental health and counseling services. The adoption, amendment, and repeal of these service limitations and maximum rates shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1). An informational copy of the service limitations and maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a service shall accept the program’s rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service. To assure service limitations that are uniform and appropriate to the levels of treatment required by the victim or derivative victim, the board may review all claims for these services as necessary to ensure their medical necessity.

(b) [Independent Evaluation] The board may request an independent examination and report from any provider of medical or medical-related services or psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. The victim or derivative victim shall be notified of the name of the provider who is to perform the evaluation within 30 days of that determination. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims. In cases where the crime involves child abuse or molestation, the provider shall have expertise in the needs of victims of child abuse or molestation, as appropriate. When a reevaluation is requested, payments shall not be discontinued prior to completion of the reevaluation.

(c) [Timing of Payments and Discontinuance] Reimbursement for any medical or medical-related services shall, if the application has been approved, be paid by the board within an average of 90 days from receipt of the claim for payment. Payments to a medical or mental health provider shall not be discontinued prior to completion of any reevaluation. Whether or not a reevaluation is obtained, if the board determines that payments to a provider shall be discontinued, the board shall notify the provider of their discontinuance within 30 days of its determination.

Comment: Derivation: Sections 13965, 13965.2.

Subdivision (a) is taken from Section 13965(j) without substantial change.

Subdivision (b) is based on Section 13965(a)(8). The second sentence of subdivision (b) is taken without substantive change from Section 13965.2, which is repealed.

Subdivision (c) is taken without substantial change from Section 13965(i).

Gov't Code § ~~13965.1~~ 13957.2. Limitations on Loss of Income and Support [amended]

~~13965.1~~ 13957.2 (a) [Limits on Compensation] Pursuant to paragraphs (2) and (3) of subdivision (a) of Section 13965 *In authorizing compensation for loss of income and support pursuant to subdivision (d) of Section 13957*, the board may take any of the following actions:

(1) ~~Authorize a cash payment to~~ *Compensate* the victim ~~equal to the pecuniary loss resulting from~~ *for loss of wages income* directly resulting from the injury, ~~subject to the following:~~

~~———(A) Loss of wages except that loss of income~~ shall not be paid by the board for more than five years following the crime, unless the victim is disabled as defined in Section 416(i) of Title 42 of the United States Code as a direct result of the injury.

~~(B) If the board determines, after review of an application for assistance, including the evaluation of a qualified provider, that pecuniary loss for which payment may be made under this paragraph is expected to continue more than six months after the date of approval of the victim's application for assistance, disbursement shall commence and continue on a monthly basis for the period of time pecuniary loss is expected to continue.~~

(2) ~~Authorize a cash payment to~~ *Compensate* an adult derivative victim for loss of ~~wages income~~, subject to the following:

(A) The derivative victim is the parent or legal guardian of a victim, who at the time of the crime was under the age of 18 years and is hospitalized as a direct result of the crime.

(B) The minor victim's treating physician certifies in writing that the presence of the victim's parent or legal guardian at the hospital is necessary for the treatment of the victim.

(C) Reimbursement for loss of ~~wages income~~ under this paragraph shall not exceed the total value of the ~~wages income~~ that would have been earned by the adult derivative victim during a 30-day period.

(3) ~~Authorize a cash payment to~~ *Compensate* an adult derivative victim for loss of ~~wages income~~, subject to the following:

(A) The derivative victim is the parent or legal guardian of a victim who at the time of the crime was under the age of 18 years.

(B) The victim dies as a direct result of the crime.

(C) The board shall pay for loss of ~~wages income~~ under this subdivision for not more than 30 days from the date of the victim's death.

(4) ~~Authorize a cash payment to~~ *Compensate* a derivative victim who was legally dependent on the victim at the time of the crime for the loss of support incurred by that person as a direct result of the crime, subject to the following:

(A) Loss of support shall ~~not~~ be paid by the board for income lost by an adult for *up to, but no more than*, a period of ~~more than~~ five years following the date of the crime.

(B) Loss of support shall not be paid by the board on behalf of a minor for a period beyond the child's attaining the age of 18 years.

(b) [Limit on Payments to All Derivative Victims] The total amount payable to all derivative victims ~~whose claims fall under~~ *pursuant to* this section as the result of one crime shall not exceed seventy thousand dollars (\$70,000).

~~(c) Any change in the law resulting from the addition or amendment of this section shall be applied prospectively to claims based on the date of the crime on which the claim for loss of wages or loss of support is based.~~

Comment. Derivation: Section 13965.1.

This section is recodified as Section 13957.2 without substantive change to subdivisions (a) and (b). Subdivision (c) is removed from this section and relocated, with changes, to subdivision (d) of Section 13959.

Gov't Code § 13957.3. Miscellaneous Rules on Payments [added]

13957.3. (a) [Time Limit] No reimbursement shall be made for any expense that is submitted more than three years after it is incurred by the victim or derivative victim. However, reimbursement may be made for an expense submitted more than three years after the date it is incurred if the victim or derivative victim has affirmed the debt and is liable for the debt at the time the expense is submitted for reimbursement, or has paid the expense as a direct result of a crime for which a timely application has been filed.

(b) [Periodic Payments] Compensation made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of compensation according to the applicant's need, subject to the maximum limits provided in this article.

(c) [Direct Payments] (1) The board may authorize direct payment to a provider of services that are reimbursable pursuant to this article and may make such payments prior to verification. However, the board may not, without good cause, authorize a direct payment to a provider over the objection of the victim or derivative victim.

(2) Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services shall, if the application has been approved, be paid by the board within 90 days of the date of receipt of the claim for payment, with subsequent payments to be made to the provider within one month of the receipt of a claim for payment.

(d) [Peer Counseling] Payments for peer counseling services provided by a rape crisis center shall not exceed fifteen dollars (\$15) for each hour of services provided. Those services shall be limited to in-person counseling for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(e) [Use of Cash Payments] The board shall develop procedures to ensure that a

victim is using compensation for job retraining or relocation only for its intended purposes. The procedures may include, but need not be limited to, requiring copies of receipts, agreements or other documents as requested, or developing a method for direct payment.

(f) [Public Assistance Programs] Compensation granted pursuant to this article shall not disqualify an otherwise eligible applicant from participation in any other public assistance program.

(g) [Attorney's Fees] The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars (\$500), whichever is less for each victim and each derivative victim. An attorney receiving fees from another source may waive the right to receive fees under this subdivision. Payments under this subdivision shall be in addition to any amount authorized or ordered under subdivision (b) of Section 13960. No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this article.

(h) [Nonprofits] A private nonprofit agency shall be reimbursed for its services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for compensation under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Comment: Derivation: Sections 13965, 13965.5.

Subdivision (a) is taken without substantive change from Section 13965.5 which is repealed.

Subdivision (b) is taken from subdivision (c) of Section 13965.

Subdivision (c)(1) is taken from Sections 13965(a)(12) and 13965(l).

Subdivision (c)(2) is based on Section 13965(a)(1)(E).

Subdivision (d) is based on Section 13965(a)(1)(E).

Subdivision (e) is taken from Section 13965(a)(4)(B) and 13965(a)(6)(C).

Subdivision (f) is taken from Section 13965(b).

Subdivision (g) is taken from Section 13965(d).

Subdivision (h) is taken from Section 13965(a)(1)(E).

Gov't Code § ~~13965.3~~ 13957.4. Expedited Payment for Mental Health Services [amended]

~~13965.3~~ 13957.4. (a) [Authorization for Expedited Payments] Notwithstanding Section ~~13962~~ 13954, the board shall develop ~~not later than April 1, 1994,~~ a simplified and expedited procedure for paying claims of a qualified provider of mental health services ~~to children and their families who qualify as victims of crime in need of services.~~

(b) [Basic Terms] A simplified and expedited procedure for paying claims

specified in subdivision (a) shall include all of the following:

(1) An agreement by the provider to subject its claims to audit procedures established by the board and to request payment only for qualified services ~~to victims who are minors and their families.~~

(2) An agreement by the board to pay claims on a regular and timely basis to a qualified provider for services ~~to victims who are minors and their families,~~ without requiring further documentation beyond that required to initially qualify the claim.

(3) Additional methods of simplifying the claims process as agreed upon between the board and the qualified provider.

(c) [Requirements for Utilizing Procedures] Simplified and expedited procedures for mental health services ~~to victims of crime who are minors~~ may be instituted when both of the following conditions are met:

(1) The board has determined that the crime has occurred and that the victim qualifies for ~~restitution~~ *compensation* pursuant to this article.

(2) Services to the victim or his or her family members, or both, are being provided by a qualified provider.

(d) [Nonprofit Providers] ~~After April 1, 1994,~~ a nonprofit agency may apply to the board for a determination that the nonprofit agency is a qualified provider for purposes of this section. The board shall approve or reject an application from a qualified provider for participation in an agreement pursuant to this section within 90 days of receipt of a complete application as required by the board.

(e) [Exception from Public Contract Code] An agreement made pursuant to this subdivision shall not be deemed to be a contract subject to the requirements of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(f) ["Qualified Provider"] For purposes of this section, "qualified provider" means a nonprofit agency with extensive experience in providing mental health services ~~to victims of crime who are minors and their families~~ and that has utilized reimbursement from the Restitution Fund at a significant level on a regular and constant basis. Upon request of a nonprofit agency, the board shall determine if the nonprofit agency is a qualified provider for purposes of this section.

Comment. Derivation: Section 13965.3.

This section, which is based on Section 13965.3, is amended to expand the board's authority to establish expedited payment contracts with qualified providers of mental health services. Under current law, that authority is limited to providers of such services to children and their families. As amended, the board could enter into contracts with any qualified mental health service provider for expedited payment. The purpose of this amendment is to make the process of paying mental health service providers more efficient, effective and economical.

Gov't Code § 13965. Scope of assistance [repealed]

~~13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim or derivative victim. The board may~~

take any or all of the following actions:

~~—— (1) Reimburse the following persons for the expense of their outpatient mental health counseling when that mental health counseling is necessary as a direct result of the crime:~~

~~—— (A) A victim in an amount not to exceed ten thousand dollars (\$10,000).~~

~~—— (B) A derivative victim who is the surviving parent, sibling, child, spouse, or fiancé of a victim of a crime which directly resulted in the death of the victim in an amount not to exceed ten thousand dollars (\$10,000).~~

~~—— (C) A derivative victim, as defined in subparagraph (A), (B), (C), or (D) of paragraph (2) of subdivision (a) of Section 13960, who is the primary caretaker of a minor victim of sexual or physical abuse whose claim is not denied or reduced pursuant to subdivision (b) or (d) of Section 13964 in a total amount not to exceed ten thousand dollars (\$10,000) for not more than two derivative victims described in this subparagraph.~~

~~—— (D) A derivative victim not eligible for reimbursement pursuant to subparagraph (B) or (C) in an amount not to exceed three thousand dollars (\$3,000), provided that mental health counseling of a derivative victim under subparagraph (E) of paragraph (2) of subdivision (a) of Section 13960 shall be reimbursed only if that counseling is necessary for the treatment of the victim.~~

~~—— (E) A victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code in an amount not to exceed three thousand dollars (\$3,000) for mental health counseling expenses only. A derivative victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code shall not be eligible for reimbursement of mental health counseling expenses.~~

~~—— The board may authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to either the victim or the derivative victim, equal to the pecuniary loss attributable to medical or medical related expenses, including counseling, directly resulting from the injury. Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services, including peer counseling services provided by a rape crisis center, shall, if the application has been approved, be paid by the board within 90 days of the date of receipt of the claim for payment, with subsequent payments to be made to the provider within one month of the receipt of a claim for payment. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the applicant.~~

~~—— When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other~~

~~reimbursement or direct subsidies are not available to serve the victim.~~

~~Payments authorized pursuant to this paragraph for peer counseling services provided by a rape crisis center shall not exceed fifteen dollars (\$15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.~~

~~(2) Authorize a cash payment to the victim or derivative victim equal to the pecuniary loss resulting from loss of wages pursuant to Section 13965.1.~~

~~(3) Authorize a cash payment to a derivative victim for loss of support pursuant to Section 13965.1.~~

~~(4)(A) Authorize a cash payment or reimbursement not to exceed two thousand dollars (\$2,000) to a victim of sexual assault or domestic violence for expenses incurred in relocating, if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well being of the victim. These expenses may include, but need not be limited to, all of the following:~~

~~(i) Deposits for utilities and telephone service.~~

~~(ii) Deposits for rental housing, not to exceed the first and last month's rent and a security deposit or two thousand dollars (\$2,000), whichever is less.~~

~~(iii) Temporary lodging and food expenses, not to exceed one thousand dollars (\$1,000).~~

~~(iv) Clothing and other personal items, not to exceed five hundred dollars (\$500).~~

~~(B) The board shall develop procedures to ensure that the victim is using the cash payment only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, lease agreements, or other documents as requested, or developing a method for direct payment to the landlord or vendor.~~

~~(C) When a relocation payment or reimbursement is provided to a victim of sexual assault or domestic violence, the victim shall agree to not inform the offender, if the identity of the offender is known to the victim, of the location of the victim's new residence and to not allow the offender, if the identity of the offender is known to the victim, on the premises at any time, or shall agree to seek a restraining order against the offender, if the identity of the offender is known to the victim.~~

~~(D) The board may authorize a cash payment or reimbursement pursuant to this paragraph to victims of crimes other than domestic violence if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well being of the victim.~~

~~(E) The cash payment or reimbursement made under this paragraph shall only be awarded once to any victim, except that the board may, under compelling circumstances, award a second cash payment or reimbursement to the same victim if both of the following conditions are met:~~

~~(i) The crime or series of crimes occurs more than three years from the date of the crime giving rise to the initial relocation cash payment or reimbursement.~~

~~—— (ii) The crime does not involve the same perpetrator.~~

~~—— (5) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.~~

~~—— (6)(A) In the case of a victim of a crime that occurred in the victim's residence, authorize reimbursement for the expense for installing or increasing residential security, not to exceed one thousand dollars (\$1,000). Installing or increasing residential security may include, but need not be limited to, both of the following:~~

~~—— (i) Home security device or system.~~

~~—— (ii) Replacing or increasing the number of locks.~~

~~—— (B) Reimbursement under this paragraph shall be made upon verification by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.~~

~~—— (C) The board shall develop procedures to ensure that the victim is using the reimbursement only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, invoices, estimates, or other documents, or developing a method for direct payment to the vendor.~~

~~—— (7)(A) In the case of a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total, authorize a reimbursement for the expense of renovating or retrofitting his or her residence or a vehicle, or both, to make the residence, the vehicle, or both, accessible or the vehicle operational by the victim. Reimbursement shall be made upon verification that the expense is medically necessary.~~

~~—— (B) The board shall develop procedures to ensure that reimbursement is made only for the purposes of this paragraph. The procedures may include, but need not be limited to, requiring copies of receipts, invoices, estimates, or other documents, or developing a method for direct payment to the vendor.~~

~~—— (8) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims. In cases where the crime involves child abuse or molestation, the provider shall have expertise in the needs of victims of child abuse or molestation, as appropriate. When a reevaluation is obtained, payments shall not be discontinued prior to completion of the reevaluation.~~

~~—— (9) When a victim dies as a direct result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay, the medical or burial expenses incurred as a direct result of the crime for the medical or burial expenses incurred in an amount not to exceed the rates or limitations established by the board.~~

~~—— (10) The total award to or on behalf of the victim or a derivative victim shall not exceed thirty five thousand dollars (\$35,000), and may be increased only in accordance with this section.~~

~~—— (11) If the victim requests that the board give priority to reimbursement of loss of wages, the board shall not pay medical expenses or mental health counseling expenses~~

except upon the request of the victim or after determining that payment of these expenses will not decrease the funds available to the victim for payment of loss of wages.

~~—— (12) The board may authorize a direct cash payment to a provider of services that are reimbursable pursuant to this article. However, the board may not, without good cause, authorize a direct cash payment to a provider over the objection of the victim or applicant.~~

~~—— (13) When a victim dies as a result of a crime and the crime occurs in a residence, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay the reasonable costs to clean the scene of the crime in an amount not to exceed one thousand dollars (\$1,000). Services reimbursed pursuant to this subdivision shall be performed by persons registered with the State Department of Health Services as trauma scene waste practitioners in accordance with Chapter 9.5 (commencing with Section 118321) of Part 14 of Division 104 of the Health and Safety Code.~~

~~—— (b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim or derivative victim from participation in any other public assistance program.~~

~~—— (c) Cash payments made pursuant to this article may be on a one time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to the victim's or derivative victim's need, subject to the maximum limits provided in this section.~~

~~—— (d) The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars (\$500), whichever is less for each victim and each derivative victim. An attorney receiving fees from another source may waive the right to receive fees under this section. Payments under this section shall be in addition to any amount authorized or ordered under subdivision (d) of Section 13969.1.~~

~~—— (e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this article.~~

~~—— (f) The maximum cash payments authorized in paragraph (10) of subdivision (a) shall be increased to seventy thousand dollars (\$70,000) if federal funds for those increases are available.~~

~~—— (g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty six thousand dollars (\$46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical related expenses, except for psychological or psychiatric treatment, or mental health counseling services.~~

~~—— (h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional~~

~~payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not exceed the limits imposed by subdivisions (a) and (j).~~

~~—— (i) Reimbursement for any medical or medical related services shall, if the victim's application has been approved, be paid by the board within an average of 90 days from receipt of the claim for payment. Payments to a medical or mental health provider under this subdivision or paragraph (1) of subdivision (a) shall not be discontinued prior to completion of any reevaluation. Whether or not a reevaluation is obtained, if the board determines that payments to a provider shall be discontinued, the board shall notify the provider of their discontinuance within 30 days of its determination.~~

~~—— (j)(1) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, for which restitution is requested pursuant to this section. For mental health and counseling services, rates shall not exceed the statewide average. The adoption, amendment, and repeal of these maximum rates shall not be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1). An informational copy of the maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service.~~

~~—— (2) To assure service limitations that are uniform and appropriate to the levels of treatment required by the victim or derivative victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars (\$5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars (\$5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.~~

~~—— (k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority that the board may have under current law except as explicitly provided in this section.~~

~~—— (l) The board, in its discretion, may make payments directly to providers prior to verification.~~

~~—— (m) Notwithstanding paragraph (1) of subdivision (a), the board may reimburse a victim or derivative victim for mental health counseling in excess of that authorized by that paragraph if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.~~

~~—— (n) Notwithstanding paragraph (1) of subdivision (a), if, as of December 31, 1993,~~

~~a person has incurred mental health counseling expenses pursuant to this article in excess of one half of the amount specified in that subdivision, the board may award, in addition to amounts awarded for previously incurred expenses, an amount equal to not more than one half of the applicable maximum amount specified in that paragraph or any additional amounts as the board determines is necessary.~~

~~—— (o) The total award to or on behalf of a victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code shall not exceed three thousand dollars (\$3,000) for mental health counseling expenses only.~~

~~—— (p) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.~~

Comment. This section is repealed and its substance is recodified in Section 13957 through 13957.3.

Gov't Code § 13965.2. Independent evaluation; notice of name of provider [repealed]

~~13965.2. Whenever an application for assistance has been approved, and the board determines that an independent evaluation pursuant to paragraph (5) of subdivision (a) of Section 13965 is appropriate, the victim or derivative victim shall be notified of the name of the provider who is to perform the evaluation within 30 days of that determination.~~

Comment. This section is repealed and its substance is incorporated in subdivision (b) of Section 13957.1.

Gov't Code § 13965.5. Reimbursements to victims or derivative victims; limitations period [repealed]

~~13965.5. (a) Except as provided in subdivision (b), no reimbursement shall be made for any expense that is submitted more than three years after it is incurred by the victim or derivative victim.~~

~~—— (b) Notwithstanding subdivision (a), reimbursement may be made for an expense submitted more than three years after the date it is incurred if the victim or derivative victim has affirmed the debt and is liable for the debt at the time the expense is submitted for reimbursement, or has paid the expense as a direct result of a crime for which a timely application has been filed.~~

Comment. This section is repealed, and its substance is incorporated in subdivision (a) of Section 13957.3 without change.

Gov't Code § ~~13962~~ 13958. Staff recommendations [amended]

~~13962 13958. (a) [Completeness of Application] The staff of the board shall determine whether an application for compensation contains all of the information required by the board. review all applications for assistance in order to ensure that they are complete. If the staff determines that an application does not contain all of the required information, the staff shall communicate that determination to the applicant with a brief statement of the additional information required is not complete, it shall be returned to the applicant with a brief statement of the additional information required.~~

The applicant, within 30 days of ~~receipt~~ *being notified that the application is incomplete thereof*, may either supply the additional information or appeal the ~~action~~ *staff's determination* to the board which shall review the application to determine whether ~~or not~~ it is complete.

(b) [Staff Recommendation] *The staff shall make a recommendation to the board to approve or deny a completed application.* The board shall approve or deny applications accepted in accordance with subdivision (a) within an average of 90 ~~calendar~~ days. Each individual application shall be approved or denied within 180 ~~calendar~~ days. These specified time periods shall operate from the date the application is ~~accepted~~ *received* by the board or ~~local contract agency~~ *victim center*, to the date of approval or denial of the application.

(1) If the board does not meet the 90-day average standard prescribed in this subdivision, the board shall, thereafter, report to the Legislature, on a quarterly basis, its progress and its current average time of processing applications. These quarterly reports shall continue until the board meets the 90-day average standard for two consecutive quarters.

(2) If the board fails to approve or deny an individual application within 180 days of the date it is accepted pursuant to this subdivision, the board shall advise the applicant and his or her representative, in writing, of the reason for the failure to approve or deny the application.

(c) [Time for Verification] Any verification of the ~~claim~~ *application* pursuant to Section 13954 which is deemed necessary shall be performed during ~~these~~ *the* specified time periods *set forth in subdivision (b).* ~~The verification process shall include sending supplemental forms to all hospitals, physicians, law enforcement officials, and other interested parties involved, verifying the treatment of the victim or derivative victim, circumstances of the crime, amounts paid or received by or for the victim or derivative victim, and other pertinent information as may be deemed necessary by the board. Verification forms shall be provided by the board and shall be returned to the board within 10 business days. All of this information shall be provided at no cost to the applicant, the board, or local victim centers. Verification forms shall require sufficient information to clearly identify the victim or derivative victim. The board shall include on the verification forms a statement certifying that a signed authorization by the applicant is retained in the applicant's file and that this certification constitutes actual authorization for the release of information, notwithstanding any other provision of law. Each request from the board to a physician for a copy or summary of medical records shall include a copy of the signed authorization for the release of information. The board shall include on the verification forms reference to this section with respect to the prompt return of the verification forms. The board, thereupon, shall consider the application at a hearing at a time and place of its choosing.~~

~~(c) The victim and the applicant, if other than the victim, shall cooperate with the staff of the board or the local victim center in the verification of the information contained in the application. Failure to cooperate shall be reported to the board, which, in its discretion, may reject the application on this ground alone.~~

~~—(d) The board may contract with local victim centers to provide verification of claims processed by the centers pursuant to conditions stated in subdivision (b).~~

Comment. Derivation: Section 13962, 13969.2.

Subdivision (a) is amended to improve clarity.

Subdivision (b) is amended to state expressly staff's obligation to make a recommendation to the board. Pursuant to Section 13959, the board must grant an applicant a hearing to contest a staff recommendation to deny an application for benefits.

Paragraphs (1) and (2) of subdivision (b) are based upon Section 13969.2.

Subdivision (b) is amended to remove the unnecessary reference to "calendar" days. Gov't Code §§ 6800-6806 deal generally with the computation of time for statutory purposes, and a reference to "180 days" means 180 calendar days.

Gov't Code § 13962.5. Training sessions for local center personnel; standardized verification procedures for local victim centers; cooperation [repealed]

~~13962.5. (a) The board and its staff shall cooperate with the Office of Criminal Justice Planning and such local victim centers as specified in Section 13835.2 of the Penal Code, in conducting training sessions for local center personnel and shall cooperate in the development of standardized verification procedures to be used by the local victim centers in the state.~~

~~—(b) The board and its staff shall cooperate with local victim centers in disseminating standardized board policies and findings as they relate to the local centers.~~

Comment. Subdivisions (a) and (b) are moved verbatim to subdivision (c) of Section 13954, thereby consolidating provisions relating to the relationship between the board and local victim centers.

Gov't Code § ~~13963~~ 13959. Board Hearing [amended]

~~13963~~ 13959. (a) **[Right to Hearing]** The board shall grant ~~an applicant for benefits~~ a hearing *to an applicant who believes he or she is entitled to compensation pursuant to this article* to contest a staff recommendation to deny ~~an application for benefits~~ compensation *in whole or in part* ~~or to deny an application to submit a late claim.~~

(b) **[Notice of Public Hearing]** The board shall notify ~~all interested persons~~ *the applicant* not less than ~~five~~ *ten* days prior to the date of the hearing. *Notwithstanding Section 11123, which provides for open meetings, if the application that the board is considering involves either a crime against a minor, a crime of sexual assault or a crime of domestic violence, the board may exclude from the hearing all persons other than board members and members of its staff, the applicant for benefits, a minor applicant's parents or guardians, the applicant's representative, any witnesses, and other persons of the applicant's choice to provide assistance to the applicant during the hearing; however, the board may not exclude persons from such a hearing if the applicant or applicant's*

representative requests that the hearing be open to the public.

(c) [Burden of Proof] At the hearing, the ~~applicant~~ *person seeking compensation* shall have the burden of establishing by a preponderance of the evidence ~~that the elements for eligibility under section 13955 , as a direct result of a crime, the victim or derivative victim incurred an injury that resulted in a pecuniary loss.~~

(d) [Applicable Law] *Except as otherwise provided by law, in making determinations of eligibility for compensation and in deciding upon the amount of compensation, the board shall apply the law in effect as of the date an application was submitted.*

~~(d)~~ **(e) [Evidence]** The hearing shall be informal and need not be conducted according to the technical rules relating to evidence and witnesses. The board may rely on any relevant evidence if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of the evidence over objection in a civil action.

~~(e)~~ The board may rely on written reports prepared for the board, or other information received, from ~~the law enforcement agency or other governmental agency public agencies~~ responsible for investigating the crime.

~~(f)~~ If the applicant or the applicant's representative chooses not to appear at the hearing, the board may act solely upon the application for ~~assistance~~ *compensation*, the staff's report, and other evidence that appears in the record.

~~(g)~~ **(f) [Location of Hearings]** Hearings shall be held in various locations with the frequency necessary to provide for the speedy adjudication of the applications. If the applicant's presence is required at the hearing, the board shall schedule the applicant's hearing in as convenient a location as possible.

~~(h)~~ At the hearing, the board shall:

~~—— (1) Provide those claimants present with information on the rules, regulations, and any other procedures and guidelines used by the board at these hearings.~~

~~—— (2) Review the application for assistance and the report prepared thereon and any other evidence obtained as a result of the verification.~~

~~—— (3) Receive any other evidence as the board finds necessary or desirable properly to evaluate the application.~~

~~(i)~~ **(g) [Hearing Officers]** The board may delegate the hearings of applications to hearing ~~examiners~~ *officers* .

(h) [Written Decisions] *The decisions of the board shall be in writing. Copies of the decisions shall be delivered to the applicant or to his or her representative personally or sent to them by mail.*

(i) [Reconsideration] *The board may order a reconsideration of all or part of a decision on its own motion or on written request of the applicant. The board may not grant more than one such request with respect to any one decision on any application for compensation. The board shall not consider any such request filed with the board more than 30 days after the personal delivery or 60 days after the mailing of the original decision.*

Comment. Derivation: Sections 13963, 13963.1, 13964(b), 13969.1.

Subdivision (b) is amended to require 10-days notice before a hearing, consistent with regulations already adopted by the board.

Subdivision (b) is amended to authorize the board to hold a closed hearing in certain cases. The language is taken verbatim from Section 13963.1.

Subdivision (c) is amended to clarify that the person seeking compensation bears the burden of proof on all issues.

Subdivision (d) provides that the board shall apply the law as it exists on the date an application is submitted. This is a change from existing law which, in Section 13965.1(c), provides that the board shall apply the law as it exists on the date of the crime. The existing rule creates substantial administrative problems since the board and its staff is essentially required to keep track of increasingly dated statutory provisions as it administers the article.

Subdivision (h), requiring that board decisions be in writing, is taken from Section 13969.1(a).

Subdivision (i), dealing with reconsideration, is taken from Section 13969.1(b).

Gov't Code § 13963.1. Hearing exclusion for certain individuals [repealed]

~~13963.1. Notwithstanding Section 11123, the board may exclude from the hearing all persons other than board members and members of its staff, the applicant for benefits, a minor applicant's parents or guardians, the applicant's representative, any witnesses, and other persons of the applicant's choice to provide assistance to the applicant during the hearing, if the application that the board is considering is the result of either a crime against a minor or a crime of sexual assault or a crime of domestic violence.~~

~~—The board may not exclude persons from a hearing to which this section applies if the applicant or applicant's representative requests that the hearing be open to the public.~~

Comment. This language is added verbatim to subdivision (b) of Section 13959 which deals with the board's notification to all interested persons of an upcoming hearing.

Gov't Code § 13960. Judicial Review [added]

13960. (a) *[Time for Filing]* Judicial review of a final decision made pursuant to this article may be had by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure. The right to petition shall not be affected by the failure to seek reconsideration before the board. The petition shall be filed as follows:

(1) *Where no request for reconsideration is made, within 30 days of personal delivery or within 60 days of the mailing of the board's decision on the application for compensation.*

(2) *Where a timely request for reconsideration is filed and rejected by the board, within 30 days of personal delivery or within 60 days of the mailing of the notice of rejection.*

(3) *Where a timely request for reconsideration is filed and granted by the board, or reconsideration is ordered by the board, within 30 days of personal delivery or within 60 days of the mailing of the final decision on the reconsidered application.*

(b) [Attorney's Fees] (1) *In an action resulting in the issuance of a writ of mandate pursuant to this section the court may order the board to pay to the applicant's attorney reasonable attorney's fees or one thousand dollars (\$1,000), whichever is less. If action is taken by the board in favor of the applicant in response to the filing of the petition, but prior to a judicial determination, the board shall pay the applicant's costs of filing the petition.*

(2) *In case of appeal by the board of a decision on the petition for writ of mandate that results in a decision in favor of the applicant, the court may order the board to pay to the applicant's attorney reasonable attorney fees.*

(3) *Nothing in this section shall be construed to prohibit or limit an award of attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure.*

Comment. Derivation: Subdivisions (c) & (d) of Section 13969.1.

This section sets forth the basis for judicial review of decisions by the board pursuant to the administrative mandamus procedure in Section 1094.5 of the Code of Civil Procedure.

Gov't Code § ~~13968~~ 13962. Notice of provisions of chapter [amended]

~~13968 13962. (a) [Publicity by Board] The board shall publicize through the board, law enforcement agencies, victim centers, hospitals, medical, mental health or other counseling service providers, and other public or private agencies, the existence of the program, including the procedures for obtaining compensation under the program. (a) The board may adopt all rules and regulations that are necessary to implement this article, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3.~~

~~— (b) It shall be the duty of every hospital licensed under the laws of this state to display prominently in its emergency room posters giving notification of the existence and general provisions of this chapter, and the existence and locations of local victim centers. The board, in cooperation with local victim centers, shall set standards for the location of a display and shall provide posters, application forms, and general information regarding the provisions of this chapter to each hospital and physician licensed to practice in the state.~~

~~(c)~~ **(b) [Information from Law Enforcement]** It shall be the duty of every local law enforcement agency to inform *crime* victims ~~of crimes~~ of the provisions of this ~~chapter~~ article, of the existence of local victim centers, and in counties where no local victim center exists, to provide application forms to victims who desire to seek ~~assistance~~ compensation pursuant to this article. The board shall provide application forms and all other documents that local law enforcement agencies and victim centers may require to

comply with this section. The board, in cooperation with local victim centers shall set standards to be followed by local law enforcement agencies for this purpose and may require them to file with the board a description of the procedures adopted by each agency to comply.

~~——(d) Notwithstanding Section 827 of the Welfare and Institutions Code or any other provision of law, every law enforcement and social service agency in the state shall provide to the board or to the designated local victim centers, upon request, a copy of a petition filed in a juvenile court proceeding, reports of the probation officer, any other document made available to the probation officer or to the judge, referee, or other hearing officer, a complete copy of the report regarding the incident and any supplemental reports involving the crime, public offense, or incident giving rise to a claim, for the specific purpose of the submission of a claim or the determination of eligibility to submit a claim filed pursuant to this article. The board or designated local victim centers shall refuse to allow inspection of a document that personally identifies a minor by anyone other than the minor who is so identified, his or her custodial parent or guardian, the attorneys for those parties, and any other persons as may be designated by court order of the judge of the juvenile court. Any information received pursuant to this section shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated. A violation of this subdivision is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).~~

~~——(e) The law enforcement agency supplying the information may, at its discretion, withhold the names of witnesses or informants from the board, if the release of such names would be detrimental to the parties or to an investigation currently in progress.~~

~~——(f) Notwithstanding any other provision of law, every state agency, upon receipt of a copy of a release signed in accordance with the Information Practices Act of 1977 by the applicant or other authorized representative, shall provide to the board or local victim center the information necessary to complete the verification of an application filed pursuant to this article.~~

~~——(g) The Department of Justice shall furnish, upon application of the board, all information necessary to verify the eligibility of any applicant for benefits pursuant to Section 13960.2, to recover any restitution fine or order obligations that are owed to the Restitution Fund or to any victim of crime, or to evaluate the status of any criminal disposition.~~

~~——(h) A privilege is not waived under Section 912 of the Evidence Code by an applicant consenting to disclosure of an otherwise privileged communication if that disclosure is deemed necessary by the board for verification of the application pursuant to Section 13961.~~

Comment. Derivation: Section 13968.

The existing language in subdivision (a) is unnecessary since Section 13920(c) already authorizes the board to adopt all rules and regulations “[g]overning any other matter over which it has jurisdiction.”

The existing language in subdivision (b) is both over-inclusive and under-inclusive in mandating the display of certain posters in hospitals and

requiring the board to send information to all physicians in the state. New language is proposed in subdivision (a) which imposes upon the board a general duty to publicize the existence of the crime victim compensation program.

The provisions dealing with verification, subdivisions (d) through (h), are moved to Section 13954.

Gov't Code § 13966. Carrier; recipient; definitions [repealed]

~~13966. As used in Sections 13966.01 and 13966.02:~~

~~—— (a) "Carrier" includes any insurer as defined in Section 23 of the Insurance Code, including any private company, corporation, mutual association, trust fund, reciprocal or interinsurance exchange authorized under the laws of this state to insure persons against liability for injuries caused to another, and also any insurer providing benefits under a policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance, or use of a motor vehicle which provides uninsured motorist endorsement or coverage, pursuant to Section 11580.2 of the Insurance Code.~~

~~—— (b) "Victim" means any person who has received assistance or will be provided assistance pursuant to this article. It includes the victim's guardian, conservator or other personal representative, estate, and survivors.~~

Comment. In light of the amendments to the statute dealing with subrogation, see Section 13963, these definitions are no longer necessary.

Gov't Code § ~~13966.01~~ 13963. Board's right of subrogation [amended]

~~13966.01~~ 13963. (a) **[Right of Subrogation]** ~~The State of California~~ *board* shall be subrogated to the rights of the ~~victim recipient to whom cash payments are granted~~ to the extent of ~~the cash payments granted~~ *any compensation granted by the board*. The subrogation rights shall be against the perpetrator of the crime or any person liable for the ~~pecuniary loss~~ *losses suffered as a direct result of the crime which was the basis for receipt of compensation*, including ~~a carrier an insurer~~ held liable in accordance with the provision of a policy of insurance issued pursuant to Section 11580.2 of the Insurance Code.

(b) **[Lien]** ~~The state~~ *board* shall also be entitled to a lien on ~~the any~~ judgment, award, or settlement ~~in the amount of the cash payments on any recovery made by in favor of or on behalf of the victim recipient for losses suffered as a direct result of the crime which was the basis for receipt of compensation in the amount of the compensation granted by the board.~~ The ~~state~~ *board* may recover this amount in a separate action, or may intervene in an action brought by or on behalf of the ~~victim recipient~~. If a claim is filed within one year of the date of recovery, the ~~state~~ *board* shall pay 25 percent of the amount of the recovery that is subject to a lien on the judgment, award, or settlement, to the ~~victim recipient~~ responsible for recovery thereof from the perpetrator of the crime, provided that the total amount of the lien is recovered. The remaining 75 percent of the amount, and any amount not claimed within one year pursuant to this section, shall be deposited in the Restitution Fund.

(c) **[Compromise]** The board may compromise or settle and release any lien pursuant to this article if it is found that the action is in the best interest of the state or the collection would cause undue hardship upon the ~~victim~~ *recipient*. Repayment obligations to the Restitution Fund shall be enforceable as a summary judgment.

(d) **[Notice to Board of Judgment, Award of Settlement]** No judgment, award, or settlement in any action or claim by a ~~victim~~ *recipient*, where the ~~state~~ *board* has an interest, shall be satisfied without first giving the board notice and a reasonable opportunity to perfect and satisfy the lien. The notice shall be given to the board in Sacramento except in cases where the board specifies that the notice shall be given otherwise. The notice shall include the complete terms of the award, settlement or judgment and the name and address of any ~~earlier~~ *insurer* directly or indirectly providing for the satisfaction.

(e) **[Notice to Board of Claim]** If the ~~victim~~ *recipient* ~~, or his or her guardian, personal representative, estate, or survivors,~~ brings an action or asserts a claim for damages against the person or persons liable for the injury or death giving rise to an award by the board under this article, notice of the institution of legal proceedings, notice of all hearings, conferences, and proceedings, and notice of settlement shall be given to the board in Sacramento except in cases where the board specifies that notice shall be given to the Attorney General. Notice of the institution of legal proceedings shall be given to the board within 30 days of filing the action. All notices shall be given by the attorney employed to bring the action for damages or by the ~~victim~~ *recipient* ~~, his or her guardian, personal representative, estate, or survivors,~~ if no attorney is employed.

Notice shall include all of the following:

- (1) Names of all parties to the claim or action.
- (2) The address of all parties to the claim or action except for those persons represented by attorneys and in that case the name of the party and the name and address of the attorney.
- (3) The nature of the claim asserted or action brought.
- (4) In the case of actions before courts or administrative agencies, the full title of the case including the identity of the court or agency, the names of the parties, and the case or docket number.

When the ~~victim~~ *recipient* or his or her attorney has reason to believe that a person from whom damages are sought is receiving a defense provided in whole or in part by a ~~earlier~~ *an insurer*, or is insured by a ~~carrier~~ for the injury caused to the ~~victim~~ *recipient*, notice shall include a statement of that fact and the name and address of the ~~earlier~~ *insurer*. Upon request of the board, a person obligated to provide notice shall provide the board with a copy of the current written claim or complaint.

(f) **[Payments to County Probation or Other County Agency]** The ~~state~~ *board* shall pay the county probation department or other county agency responsible for collection of funds owed to the Restitution Fund under Section 13967, as operative on or before September 28, 1994, Section 1202.4 of the Penal Code, Section 1203.04, as operative on or before August 2, 1995, of the Penal Code, or Section 730.6 of the Welfare and Institutions Code, 10 percent of the funds so owed and collected by the county

agency and deposited in the Restitution Fund. This payment shall be made only when the funds are deposited in the Restitution Fund within 45 days of the end of the month in which the funds are collected. Receiving 10 percent of the moneys collected as being owed to the Restitution Fund shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The 10 percent rebates shall be used to augment the budgets for the county agencies responsible for collection of funds owed to the Restitution Fund, as provided in Section 13967, as operative on or before September 28, 1994, Section 1202.4 of the Penal Code, Section 1203.04, as operative on or before August 2, 1995, of the Penal Code, or Section 730.6 of the Welfare and Institutions Code. The 10 percent rebates shall not be used to supplant county funding.

(g) [Priorities] In the event of judgment or award in a suit or claim against a third party or insurer, if the action or claim is prosecuted by the recipient alone, the court or agency shall first order paid from any judgment or award the reasonable litigation expenses incurred in preparation and prosecution of the action or claim, together with reasonable attorney's fees when an attorney has been retained. After payment of the expenses and attorney's fees, the court or agency shall, on the application of the board, allow as a lien against the amount of the judgment or award, the amount of the compensation granted by the board to the recipient for losses sustained as a result of the same incident upon which the settlement, award, or judgment is based.

(h) ["Recipient"] For purposes of this section, "recipient" means any person who has received compensation or will be provided compensation pursuant to this article, including the victim's guardian, conservator or other personal representative, estate, and survivors.

Comment. Derivation: Sections 13966, 13966.01, 13966.02.

This section is amended for clarity. Subdivision (g) is taken verbatim from Section 13966.02. Subdivision (h) is taken from subdivision (b) of Section 13966.

Gov't Code § 13966.02. Judgment in action prosecuted by recipient alone; payment of litigation expenses and attorney fees; lien for amount of assistance [repealed]

~~13966.02. In the event of judgment or award in a suit or claim against a third party or carrier, if the action or claim is prosecuted by the victim *recipient* alone, the court or agency shall first order paid from any judgment or award the reasonable litigation expenses incurred in preparation and prosecution of the action or claim, together with reasonable attorney's fees when an attorney has been retained. After payment of the expenses and attorney's fees, the court or agency shall, on the application of the State Board of Control *board*, allow as a lien against the amount of the judgment or award, the amount of the assistance granted by the board to the victim *recipient* for losses sustained as a result of the same incident upon which the settlement, award, or judgment is based, as provided in Section 13966.01.~~

Comment. The substance of this section is now included in subdivision (g) of Section 13963, and this section is therefore repealed.

Gov't Code § 13969 13964. Payment of claims Restitution Fund [amended]

~~13969~~ 13964. (a) **[Payment of Claims]** Claims under this article shall be paid from the Restitution Fund.

(b) **[Appropriation]** Notwithstanding Section 13340, the proceeds in the Restitution Fund are hereby continuously appropriated to the board for the purposes of this article. However, the funds appropriated pursuant to this section for administrative costs of the board shall be subject to annual review through the state budget process.

(c) **[Emergency Award Revolving Fund]** A sum not to exceed 15 percent of the amount appropriated annually to pay claims pursuant to this article may be withdrawn from the Restitution Fund, to be used as a revolving fund by the board for the payment of emergency awards pursuant to Section 13961.

Comment. Derivation: Sections 13967, 13969, 13961.2.

Subdivision (a) is taken verbatim from Section 13969.

Subdivision (b) is taken verbatim from Section 13967.

Subdivision (c) is taken verbatim from 13961.2.

Gov't Code § 13969.1. Decisions of the board; notice; reconsideration; mandamus petitions; time; attorney fees and costs [repealed]

~~13969.1. (a) The decisions of the board shall be in writing. Copies of the decisions shall be delivered to the applicant or to his or her representative personally or sent to them by mail.~~

~~———— (b) The board itself may order a reconsideration of all or part of the application for assistance on its own motion or on written request of the applicant or his or her representative. The board may not grant more than one such request on any application for assistance. The board shall not consider any such request filed with the board more than 30 days after the personal delivery or 60 days after the mailing of the original decision.~~

~~———— (c) Judicial review of a final decision made pursuant to this article may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure. The right to petition shall not be affected by the failure to seek reconsideration before the board. The petition shall be filed as follows:~~

~~———— (1) Where no request for reconsideration is made, within 30 days of personal delivery or within 60 days of the mailing of the board's decision on the application for assistance.~~

~~———— (2) Where a timely request for reconsideration is filed and rejected by the board, within 30 days of personal delivery or within 60 days of the mailing of the notice of rejection.~~

~~———— (3) Where a timely request for reconsideration is filed and granted by the board, or reconsideration is ordered by the board, within 30 days of personal delivery or within 60 days of the mailing of the final decision on the reconsidered application.~~

~~———— (d) (1) In an action resulting in the issuance of a writ of mandate pursuant to this section the court may order the board to pay to the applicant's attorney reasonable attorney's fees or one thousand dollars (\$1,000), whichever is less. If action is taken by the board in favor of the applicant in response to the filing of the petition, but prior to a~~

~~judicial determination, the board shall pay the applicant's costs of filing the petition.~~

~~—— (2) In case of appeal by the board of a decision on the petition for writ of mandate that results in a decision in favor of the applicant, the court may order the board to pay to the applicant's attorney reasonable attorney fees.~~

~~—— (3) Nothing in this section shall be construed to prohibit or limit an award of attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure.~~

Comment. Subdivisions (a) and (b) have been moved to Section 13959. Subdivisions (c) and (d) have been moved to Section 13960.

Gov't Code § 13969.2. Report; claim processing time [repealed]

~~13969.2. (a) If the board does not meet the 90-day average standard prescribed in subdivision (b) of Section 13962, the board shall, thereafter, report to the Legislature, on a quarterly basis, its progress and its current average time of processing a claim.~~

~~—— (b) If the board fails to approve or deny an individual claim within 180 days of the date it is accepted pursuant to subdivision (b) of Section 13962, the board shall advise the applicant and his or her representative, in writing, of the reason for the failure to approve or deny the claim.~~

Comment. Subdivisions (a) and (b) have been moved to subdivision (b) of Section 13954 to consolidate in that section all provisions relating to the 90-day and 180-day standards.

Gov't Code § ~~13969.3~~ 13965. Liability for overpayment [amended]

~~13969.3 13965. (a) [Liability for Overpayment] A person who has been overpaid or on whose behalf any provider or other person has been overpaid under this chapter is liable for that amount unless both of the following facts exist:~~

~~(a) (1) The overpayment was not due to fraud, misrepresentation, or willful nondisclosure on the part of the recipient.~~

~~(b) (2) The overpayment was received without fault on the part of the recipient, and its recovery would be against equity and good conscience.~~

~~(b) [Overpayments Over \$2,000] For overpayments which are not in excess of two thousand dollars (\$2,000), the board may authorize the executive officer to establish limits for the administration of this section. For All overpayments which are in excess of exceeding two thousand dollars (\$2,000) , the board shall report shall be reported to the Legislature in the manner prescribed by pursuant to Section 13928 and the relief from liability described above shall be subject to legislative approval.~~

Comment. Derivation: Section 13969.3.

This section is being amended to improve its clarity.

Gov't Code § ~~13969.4~~ 13966. Recovery of money owed to fund [amended]

~~13969.4 13966. The executive officer or his or her designees, subject to this article, The board may do the following to recover moneys owed to the Restitution Fund:~~

~~(a) [Civil Action] File a civil action against the liable person for the recovery of the amount of moneys owed. This action shall be filed within one year of either of the~~

following events, or within three years of either of the following events if the liable person was overpaid benefits due to fraud, misrepresentation, or nondisclosure as described in Section ~~13969.3~~ 13965:

(1) The mailing or personal service of the notice of the moneys owed if the person affected does not file an appeal with the board or person designated by the board.

(2) The mailing of the decision of the board if the person affected does not initiate a further appeal.

(b) [Summary Judgment] (1) Initiate proceedings for a summary judgment against the liable person. However, this subdivision shall apply only where the ~~executive officer~~ board has found, pursuant to Section ~~13969.3~~ 13965, that the overpayment may not be waived. The ~~executive officer~~ board may, not later than three years after the overpayment became final, file with the clerk of the proper court in the county from which the overpayment of benefits was paid or in the county in which the claimant resides, a certificate containing all of the following:

~~(1)~~ (A) The amount due, plus interest from the date that the initial determination of the moneys owed was made.

~~(2)~~ (B) A statement that the ~~executive officer~~ board has complied with all the provisions of this article prior to the filing of the certificate.

~~(3)~~ (C) A request that the judgment be entered against the liable person in the amount set forth in the certificate.

(2) The clerk, immediately upon the filing of the certificate, shall enter a judgment for the state against the liable person in the amount set forth in the certificate.

Comment. Derivation: Section 13969.4.

This section is amended to improve its clarity. As a general drafting matter, powers should be granted to the board which, in its discretion, may delegate those powers to the executive officer pursuant to Section 13909.

Gov't Code § 13967. Restitution Fund [repealed]

~~13967. Notwithstanding Section 13340, the proceeds in the Restitution Fund are hereby continuously appropriated to the board for the purpose of indemnifying persons filing claims pursuant to this article. However, the funds appropriated pursuant to this section for administrative costs of the State Board of Control shall be subject to annual review through the state budget process.~~

Comment. This section has been moved to Section 13963.

Gov't Code § ~~13969.5~~ 13967. Department of Mental Health programs [amended]

~~13969.5~~ 13967. (a) **[Estimate of Excess]** (1) The Governor's Budget shall specify the estimated amount in the Restitution Fund that is in excess of the amount needed to pay claims pursuant to this article, to pay administrative costs for increasing restitution funds, and to maintain a prudent reserve.

(2) It is the intent of the Legislature that, notwithstanding Section ~~13967~~ 13963, funds be appropriated in the annual Budget Act to the State Department of Mental Health from those funds that are determined to be in excess of the amount needed pursuant to

paragraph (1), for the purposes of this section.

(b) [Authorization for Use of Funds] Notwithstanding any other provision of law, moneys in the Restitution Fund appropriated in the annual Budget Act pursuant to subdivision (a) may be used to fund programs and activities operated by the State Department of Mental Health, that address the problem of unequal protection for, and unequal services to, crime victims with disabilities.

(c) [Programs and Activities] Programs and activities that may be funded pursuant to this section include the following, as they relate to persons with disabilities:

- (1) Identification of crime victims with disabilities.
- (2) Crime and violence prevention.
- (3) Improvement of access to victim's support and compensation.
- (4) Planning and activities by service provider organizations to address the reduction of crime.
- (5) Establishment of programs for personal safety, planning, and training .
- (6) Public information efforts.
- (7) Coordination with other federal and state agencies.
- (8) Training of staff.
- (9) Programs and activities that facilitate the building of partnerships between advocates and service providers and the criminal justice system to assist crime victims with disabilities to identify and report crime, and assist them in navigating the criminal justice system; secure victim assistance for victims with disabilities; and assist the criminal justice system in investigating, prosecuting, and trying those cases.
- (10) Any other program or activity related to crime victims with disabilities.

(d) [Evaluation] Moneys appropriated from the Restitution Fund may also be used for the evaluation of the effectiveness of the programs and activities funded pursuant to this section.

Comment. Derivation: Section 13969.5.

This section is renumbered as part of the overall recodification of the chapter.

Gov't Code § ~~13968.5~~ 13968. Victim reimbursement for grief, mourning, and bereavement services; pilot program; report [amended]

~~13968.5~~ 13968. (a) The board shall conduct a pilot program that entitles a victim or derivative victim to be reimbursed from the Restitution Fund for grief, mourning, and bereavement services in cases of death or severe trauma, except that the services shall not include mental health services for which a state license is required. These services shall be rendered by a person certified as a child life specialist by the National Child Life Council, who has at least five years of professional experience in the field of child life, as defined by the council. These services shall be performed under the supervision of a court, hospital, physician and surgeon, licensed psychotherapist included in Section 1010 of the Evidence Code, community-based organization, or county. The board may only include in the program a certified child life specialist who has been determined by a current employer in California or a California licensing entity not to have a criminal

history that would prevent that employment or the issuance of a license. If neither determination has occurred, the board shall secure from the Department of Justice a criminal record to determine whether the applicant would be disqualified from employment pursuant to Sections 45122.1 and 45123 of the Education Code, and for these purposes the board may make the determinations required by that section. The board may charge a certified child life specialist a fee for the actual cost of fingerprinting and obtaining the criminal history information required by this section. The program shall terminate on January 1, 2004. The board shall evaluate the program and, notwithstanding Section 7550.5, shall report its conclusions and recommendations to the Legislature by January 31, 2003. The board may consider whether child life specialists should be licensed by a state agency in making its recommendations to the Legislature.

(b) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

Comment. Derivation: Section 13968.5.

This section is renumbered as part of the overall recodification of this article.

Gov't Code § ~~13961.6~~ 13969. Reimbursements related to terrorism [amended]

~~13961.6~~ 13969. (a) The board may provide reimbursements, which cumulatively shall not exceed a total of two million five hundred seventy-five thousand dollars (\$2,575,000), to county boards of supervisors, upon their request, for either of the following purposes:

(1) Providing group mental health counseling for those suffering trauma as a result of terrorism, as defined in Section 2332a or 2332b of Title 18 of the United States Code.

(2) Providing technical assistance in the promotion of tolerance for individuals whose national origin or religion may be targets of discrimination as a result of terrorism as described in this subdivision.

(b) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

Comment. Derivation: Section 13961.6.

This section is renumbered as part of the overall recodification of this article.

Gov't Code § ~~13965.6~~ 13969.1. Scope of compensation related to terrorist attacks occurring on September 11, 2001 [amended]

~~13965.6~~ 13969.1. (a) The board may expand the scope of ~~assistance~~ compensation to include derivative victims who incur a pecuniary loss as a direct result of any of the four terrorist attacks that occurred at the World Trade Center and the Pentagon, and in Pennsylvania, on September 11, 2001, as follows:

(1) A California resident derivative victim, as defined in paragraph (2) of subdivision (a) of Section 13960, when the victim has been injured or killed in a terrorist

attack described in this section, regardless of whether or not the victim is or was a resident of the state.

(2) A California resident grandparent or grandchild of a victim injured or killed in a terrorist attack described in this section, regardless of whether or not the victim is or was a resident of the state.

(3) A California resident mother-in-law or father-in-law of a victim injured or killed in a terrorist attack described in this section, regardless of whether or not the victim is or was a resident of the state.

(4) As determined by the board, any other California resident family member of a victim injured or killed in a terrorist attack described in this section, regardless of whether or not the victim is or was a resident of the state.

(b) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

Comment. Derivation: Section 13965.6.

This section is renumbered as part of the overall recodification of this article.

Gov't Code § ~~13968.7~~ 13969.2. Reimbursement for mental health counseling for members of California trauma or search and rescue teams relating to terrorist attacks on September 11, 2001 [amended]

~~13968.7~~ 13969.2. (a) The board may provide reimbursement in an amount not to exceed ten thousand dollars (\$10,000) each, for the expense of mental health counseling for members of California trauma or search and rescue teams that were dispatched to the scene of any of the four terrorist attacks described in Section 13965.6.

(b) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

Comment. Derivation: Section 13968.7.

This section is renumbered as part of the overall recodification of this article.

Gov't Code § ~~13968.8~~ 13969.3. Allocation to victim compensation program related to terrorist attack on World Trade Center [repealed]

~~13968.8~~ 13969.3. (a) The board may make a one-time allocation of one million dollars (\$1,000,000) to the victim compensation program in the State of New York to aid that state in compensating victims of the terrorist attack on the World Trade Center that occurred on September 11, 2001.

(b) The Legislature finds and declares that the provision of funds for victim compensation in the State of New York as described in subdivision (a) serves a public purpose and does not constitute a gift of public funds within the meaning of Section 6 of Article XVI of the California Constitution.

(c) This section shall remain in effect only until January 1, 2004, and as of that

date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

Comment. Derivation: Section 13968.8.

This section is renumbered as part of the overall recodification of this article.

Penal Code

Penal Code § 1202.42. Income deduction order [added]

1202.42. Upon entry of a restitution order under subdivision (c) of Section 13967 of the Government Code, as operative on or before September 28, 1994, paragraph (3) of subdivision (a) of Section 1202.4, or Section 1203.04, as operative on or before August 2, 1995, the following shall apply:

(a) The court shall enter a separate order for income deduction upon determination of the defendant's ability to pay, regardless of the probation status, in accordance with Section 1203. Determination of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required.

(b)(1) In any case in which the court enters a separate order for income deduction under this section, the order shall be stayed until the agency in the county responsible for collection of restitution determines that the defendant has failed to meet his or her obligation under the restitution order and the defendant has not provided the agency with good cause for the failure in accordance with paragraph (2).

(2) If the agency responsible for collection of restitution receives information that the defendant has failed to meet his or her obligation under the restitution order, the agency shall request the defendant to provide evidence indicating that timely payments have been made or provide information establishing good cause for the failure. If the defendant fails to provide the agency with the evidence or fails to establish good cause within five days of the request, the agency shall immediately inform the defendant of that fact, and shall inform the clerk of the court in order that an income deduction order shall be served pursuant to subdivision (f) following a 15-day appeal period. The defendant may apply for a hearing to contest the lifting of the stay pursuant to subdivision (f).

(c) The income deduction order shall direct a payer to deduct from all income due and payable to the defendant the amount required by the court to meet the defendant's obligation.

(d) The income deduction order shall be effective so long as the order for restitution upon which it is based is effective or until further order of the court.

(e) When the court orders the income deduction, the court shall furnish to the defendant a statement of his or her rights, remedies, and duties in regard to the income deduction order. The statement shall state the following:

(1) All fees or interest that shall be imposed.

(2) The total amount of income to be deducted for each pay period.

(3) That the income deduction order applies to current and subsequent payers and periods of employment.

(4) That a copy of the income deduction order will be served on the defendant's payer or payers.

(5) That enforcement of the income deduction order may only be contested on the ground of mistake of fact regarding the amount of restitution owed.

(6) That the defendant is required to notify the clerk of the court within seven days after changes in the defendant's address, payers, and the addresses of his or her payers.

(7) That the court order will be stayed in accordance with subdivision (b) and that a hearing is available in accordance with subdivision (f).

(f)(1) Upon receiving the notice described in paragraph (2) of subdivision (b), the clerk of the court or officer of the agency responsible for collection of restitution shall serve an income deduction order and the notice to payer on the defendant's payer unless the defendant has applied for a hearing to contest the enforcement of the income deduction order.

(2)(A) Service by or upon any person who is a party to a proceeding under this section shall be made in the manner prescribed for service upon parties in a civil action.

(B) Service upon the defendant's payer or successor payer under this section shall be made by prepaid certified mail, return receipt requested.

(3) The defendant, within 15 days after being informed that the order staying the income deduction order shall be lifted, may apply for a hearing to contest the enforcement of the income deduction order on the ground of mistake of fact regarding the amount of restitution owed or on the ground that the defendant has established good cause for the nonpayment. The timely request for a hearing shall stay the service of an income deduction order on all payers of the defendant until a hearing is held and a determination is made as to whether the enforcement of the income deduction order is proper.

(4) The notice to payer shall contain only information necessary for the payer to comply with the income deduction order. The notice shall do all of the following:

(A) Require the payer to deduct from the defendant's income the amount specified in the income deduction order, and to pay that amount to the clerk of the court.

(B) Instruct the payer to implement the income deduction order no later than the first payment date that occurs more than 14 days after the date the income deduction order was served on the payer.

(C) Instruct the payer to forward, within two days after each payment date, to the clerk of the court the amount deducted from the defendant's income and a statement as to whether the amount totally or partially satisfies the periodic amount specified in the income deduction order.

(D) Specify that if a payer fails to deduct the proper amount from the defendant's income, the payer is liable for the amount the payer should have deducted, plus costs, interest, and reasonable attorney's fees.

(E) Provide that the payer may collect up to five dollars (\$5) against the defendant's income to reimburse the payer for administrative costs for the first income

deduction and up to one dollar (\$1) for each deduction thereafter.

(F) State that the income deduction order and the notice to payer are binding on the payer until further notice by the court or until the payer no longer provides income to the defendant.

(G) Instruct the payer that, when he or she no longer provides income to the defendant, he or she shall notify the clerk of the court and shall also provide the defendant's last known address and the name and address of the defendant's new payer, if known, and that, if the payer violates this provision, the payer is subject to a civil penalty not to exceed two hundred fifty dollars (\$250) for the first violation or five hundred dollars (\$500) for any subsequent violation.

(H) State that the payer shall not discharge, refuse to employ, or take disciplinary action against the defendant because of an income deduction order and shall state that a violation of this provision subjects the payer to a civil penalty not to exceed two hundred fifty dollars (\$250) for the first violation or five hundred dollars (\$500) for any subsequent violation.

(I) Inform the payer that when he or she receives income deduction orders requiring that the income of two or more defendants be deducted and sent to the same clerk of a court, he or she may combine the amounts that are to be paid to the depository in a single payment as long as he or she identifies that portion of the payment attributable to each defendant.

(J) Inform the payer that if the payer receives more than one income deduction order against the same defendant, he or she shall contact the court for further instructions.

(5) The clerk of the court shall enforce income deduction orders against the defendant's successor payer who is located in this state in the same manner prescribed in this subdivision for the enforcement of an income deduction order against a payer.

(6) A person may not discharge, refuse to employ, or take disciplinary action against an employee because of the enforcement of an income deduction order. An employer who violates this provision is subject to a civil penalty not to exceed two hundred fifty dollars (\$250) for the first violation or five hundred dollars (\$500) for any subsequent violation.

(7) When a payer no longer provides income to a defendant, he or she shall notify the clerk of the court and shall provide the defendant's last known address and the name and address of the defendant's new payer, if known. A payer who violates this provision is subject to a civil penalty not to exceed two hundred fifty dollars (\$250) for the first violation or five hundred dollars (\$500) for a subsequent violation.

(g) As used in this section, "good cause" for failure to meet an obligation or "good cause" for nonpayment means, but shall not be limited to, any of the following:

(1) That there has been a substantial change in the defendant's economic circumstances, such as involuntary unemployment, involuntary cost-of-living increases, or costs incurred as the result of medical circumstances or a natural disaster.

(2) That the defendant reasonably believes there has been an administrative error with regard to his or her obligation for payment.

(3) Any other similar and justifiable reasons.

Comment. Derivation: Gov't Code § 13967.2.

This section is moved from Section 13967.2 of the Government Code to Section 1202.42 of the Penal Code. Section 1202.4 of the Penal Code deals generally with judgments ordering restitution in criminal cases, and it is therefore appropriate that this provision, dealing with income deduction orders, be relocated to the Penal Code.

Penal Code § 1202.43. Persons to whom payable [added]

1202.43. (a) The restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative on or before September 28, 1994, subparagraph (B) of paragraph (2) of subdivision (a) of Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4 shall be payable to the clerk of the court, the probation officer, or any other person responsible for the collection of criminal fines. If the defendant is unable or otherwise fails to pay that fine in a felony case and there is an amount unpaid of one thousand dollars (\$1,000) or more within 60 days after the imposition of sentence, or in a case in which probation is granted, within the period of probation, the clerk of the court, probation officer, or other person to whom the fine is to be paid shall forward to the Controller the abstract of judgment along with any information which may be relevant to the present and future location of the defendant and his or her assets, if any, and any verifiable amount which the defendant may have paid to the victim as a result of the crime.

(b) A restitution fine shall be deemed a debt of the defendant owing to the state for the purposes of Sections 12418 and 12419.5 of the Government Code, excepting any amounts the defendant has paid to the victim as a result of the crime. Upon request by the Controller, the district attorney of a county or the Attorney General may take any necessary action to recover amounts owing on a restitution fine. The amount of the recovery shall be increased by a sum sufficient to cover any costs incurred by any state or local agency in the administration of this section. The remedies provided by this subdivision are in addition to any other remedies provided by law for the enforcement of a judgment.

Comment. Derivation: Gov't Code § 13967.5.

This section is moved from Section 13967.5 of the Government Code to Section 1202.43 of the Penal Code. Section 1202.4 of the Penal Code deals generally with judgments ordering restitution in criminal cases, and it is therefore appropriate that this provision, dealing with income deduction orders, be relocated to the Penal Code.